

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
-----x

4 SIDNEY GORDON and JEFFREY TAUBER,

5 Plaintiffs,

6 v.

Case No:
11-cv-09665 (JSR)

7 SONAR CAPITAL MANAGEMENT LLC;
8 NOAH FREEMAN; NEIL DRUKER;
9 PRIMARY GLOBAL RESEARCH, LLC; SONAR
PARTNERS, LP; SONAR INSTITUTIONAL
FUND, LP; SONAR OVERSEAS FUND, LTD.;
and JOHN AND JANE DOES 1 THROUGH 100,

10 Defendants.
11

-----x
12 January 22, 2015
13 9:40 a.m.
14

15 CONFIDENTIAL
16

17 Videotaped deposition of JEFFREY
18 TAUBER, taken by defendants, pursuant to
19 notice, at the offices of SEWARD & KISSEL
20 LLP, One Battery Plaza, New York, NY 10004,
21 before Sharon Lengel, a Registered
22 Professional Reporter and Notary Public of
23 the State of New York.
24
25

APPEARANCES:

BROWER PIVEN

Attorneys for plaintiff

Jeffrey Tauber

475 Park Avenue South, 33rd Floor

New York, NY 10016

BY: DAVID A.P. BROWER

BRIAN KERR

SEWARD & KISSEL LLP

Attorneys for defendants

Sonar Capital Management, LLC,

Sonar Partners, LP,

Sonar Institutional Fund, LP,

Sonar Overseas Fund, Ltd.,

Neil Druker

One Battery Plaza

New York, NY 10004

BY: MICHAEL W. BROZ

MARK J. HYLAND

PRESENT:

MATTHEW MAIORANO, videographer

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective
parties hereto, that all objections, except
as to form, are reserved to the time of
trial.

IT IS FURTHER STIPULATED AND AGREED
that the deposition may be signed and sworn
to before any officer authorized to
administer an oath.

IT IS FURTHER STIPULATED AND AGREED
that the sealing and filing of the
deposition be waived.

THE VIDEOGRAPHER: Stand by,
please.

This is the beginning of Tape
No. 1. We are now on the record at
approximately 9:40 a.m. Today's date
is January 22, 2015. This is the
opening of the deposition of Jeffrey
Tauber in the matter of Gordon v. Sonar
Capital Management, LLC, et al.

The deposition is being held at
the law offices of Seward & Kissel at
One Battery Park Plaza, New York, New
York.

The court reporter is Sharon
Lengel with Pirozzi & Hillman. I am
the legal videographer, Matt Maiorano,
also with Pirozzi & Hillman.

Will counsel please introduce
themselves.

MR. HYLAND: Mark J. Hyland,
Seward & Kissel, for the Sonar
defendants and Defendant Neil Druker.

MR. BROWER: David Brower, Brower
& Piven for the Plaintiff Tauber in the

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2 class.

3 MR. KERR: Brian Kerr, also for

4 the plaintiff.

5 MR. BROZ: Michael Broz also for

6 the Sonar defendants and Neil Druker.

7 THE VIDEOGRAPHER: Will the court

8 reporter please swear in the witness.

9 JEFFREY TAUBER,

10 called as a witness, having been duly

11 sworn, testified as follows:

12 EXAMINATION

13 BY MR. HYLAND:

14 THE VIDEOGRAPHER: You may

15 proceed.

16 Q. Good morning, Mr. Tauber.

17 A. Good morning.

18 Q. Did you meet with anybody in

19 preparation for your testimony today?

20 A. Yes.

21 Q. And who did you meet with?

22 A. I met with my attorneys.

23 Q. And who were they?

24 A. They are the gentlemen to my

25 right.

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2 Q. What's his name?

3 A. Mr. Kerr and --

4 THE WITNESS: Dave, what's your
5 last name?

6 MR. BROWER: Brower.

7 A. Brower. It's Brower.

8 Q. Okay. While you're answering
9 questions and under oath, you're not
10 permitted to ask anybody else information
11 for your answers. You just have to give me
12 your best recollection, okay?

13 A. I thought that was foundational,
14 and it was -- it was appropriate. I will
15 follow your instruction.

16 Q. Thank you.

17 Was anyone else present at the
18 meeting?

19 A. No.

20 Q. Okay.

21 MR. BROWER: Could you speak up a
22 little bit.

23 Q. Is there another plaintiff in the
24 action in which you are the plaintiff?

25 A. I believe there is.

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Q. Who is that?

A. Clark? I -- I'm not -- I'm not sure of the last name.

Q. Okay. Have you ever spoken with the person before?

A. Yeah.

Q. When is the last time you spoke with him?

A. It would have been on -- by phone, probably within -- probably around perhaps two years ago.

Q. Was it at about the time that you had made a motion to be designated as the lead representative?

A. It was after that.

Q. All right. So you haven't spoken to the coplaintiff in the last two years?

A. I have spoken to him on several occasions in the months subsequent to the hearing on -- and I also made attempts to contact him and was not able to do so on several occasions.

Q. Okay. When is the last time you spoke to him?

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A. I'd have to give you my best guesstimate because I don't have a clear recollection. I believe it would have been in 2012.

Q. Okay. Thank you. That's fine.
Was there anyone else present when you were preparing to meet for your deposition besides Mr. Brower and Mr. Kerr?

MR. BROWER: Asked and answered.

Q. You can answer.

A. No.

Q. Okay. Does your coplaintiff have separate counsel?

A. I believe he does.

Q. Do you know who represents him?

A. Huber or Haber I believe is the last name.

Q. Okay. Anyone else?

A. Not to my knowledge.

Q. Okay. And can you summarize the allegations that you are making on behalf of the class in this action.

A. I believe that the nature of this action is the allegation that there was

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insider information and insider trading
which adversely affected the class -- the
classes that I represent.

Q. Okay. And what was the nature of
the alleged insider information?

A. Well, I can tell you what I have
learned through documents and through
discussions with my attorneys. At least I
could summarize what I understand them to
be. Basically, as I understand it, there
was someone within the Sigma Corporation
who provided information to individuals
outside, and those individuals -- one of
whom I understand was a gentleman by the
name of Freeman or Furman. Another
individual who was given this information
was a gentleman by the name of Druker, and
that that information was used to affect
their buying and selling of stocks in a way
that was adverse to my interest and the
classes I represent.

Q. Can you describe the classes that
you represent.

A. I represent buyers of Sigma stock

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during periods when the insider trading and individuals were relying on insider trading were selling stock based upon information that they had. And I represent sellers who were selling stock at the time, that individuals who had insider trading were buying the stock of members of that class because of the information that they had to the detriment of my class.

Q. How many class periods are involved?

A. Well, I understand that the sellers suit involves I believe two -- two periods in 2007, and if I'm not mistaken, the buyers involve a single period.

Q. And when is that period?

A. I couldn't give you exact dates.

Q. Okay.

A. I think we're talking about the summer through the end of the year and in -- perhaps into the first -- first month of 2008.

Q. So is it correct that for two periods, you represent or purport to

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2 represent a class of sellers, and for one

3 period, a class of buyers?

4 A. That's correct.

5 Q. All right. And during the

6 periods where you purport to represent

7 sellers, were you selling securities?

8 MR. BROWER: Object to the form.

9 A. I believe that's correct.

10 Q. Were you also buying securities

11 in Sigma?

12 A. During -- could you -- can you

13 restate the question?

14 Q. Yes. During -- during the seller

15 class, you were selling securities of

16 Sigma, correct?

17 A. Correct.

18 Q. During the seller class, were you

19 also buying securities issued by Sigma?

20 A. Yes.

21 Q. And during the seller class, were

22 you selling more than you were buying, or

23 were you buying more than you were selling?

24 A. I'm not sure I could give you an

25 answer to that. I was trying to purchase

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2 stock or -- and sell stock and make a
3 profit at it. I have not gone over and
4 reviewed that information.

5 Q. So you have not at any time added
6 up the purchases and sales during the class
7 periods to figure out if you were a net
8 buyer or a net seller?

9 A. I believe that I had done that
10 earlier in the case, but I don't have a
11 recollection as to which -- which was
12 greater. I do know that -- that in regards
13 to this -- this action, that there are
14 more -- there were more relevant sales and
15 purchases, I believe.

16 Q. During what period?

17 A. During the period from the summer
18 through -- well, during the period of the
19 buying and selling that's -- that's
20 alleged.

21 Q. Well, we've -- you -- you --
22 you've brought an action where you purport
23 to represent three classes of plaintiffs,
24 correct?

25 A. I think there are two classes and

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2 three periods.

3 Q. All right. And, so, as you sit
4 here today, can you testify during period
5 one whether you purchased more securities
6 of Sigma than you sold, or you sold more
7 than you purchased?

8 A. That's not information that I --
9 that I have -- that I've reviewed recently.
10 So I cannot answer that question.

11 Q. Okay. And for Period No. 2 as
12 you sit here today, can you state whether
13 you purchased more Sigma securities than
14 you sold, or you sold more than you
15 purchased?

16 A. Once again, that's not
17 information that I reviewed recently, and
18 I'm not -- I do not have the answer to
19 that.

20 Q. I'm going to ask the same
21 question for Period No. 3, whether you, as
22 you sit here today, can testify as to
23 whether you purchased more Sigma securities
24 or sold more during that period.

25 A. I have the same answer.

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2 Q. Okay.

3 MR. HYLAND: I call this Tauber

4 Exhibit 1.

5 (A notice of deposition was

6 marked as Tauber 1 for identification.)

7 THE WITNESS: Thank you.

8 Q. Mr. Tauber, do you recognize

9 Tauber Exhibit 1?

10 A. It may be a document that I have

11 received. I don't recognize it.

12 Q. Okay. And it's actually a

13 two-page document, if you turn over the

14 other side.

15 A. No.

16 Q. Okay. And looking at it, do you

17 understand that you're appearing here today

18 pursuing to this notice of deposition?

19 A. I understand that.

20 Q. Okay. Now, when did you meet

21 with Mr. Brower and Mr. Kerr in preparation

22 for your deposition?

23 A. Yesterday.

24 Q. For how long?

25 A. Perhaps two -- two hours.

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2 Q. All right. Had you met them

3 before that?

4 A. Of course.

5 Q. Okay. And when had you last met

6 with Mr. Brower or Mr. Kerr before

7 yesterday?

8 A. Do you mean whether -- when did I

9 communicate with them, or when did I

10 actually meet with them physically?

11 Q. Let's talk about meeting first,

12 okay?

13 A. Okay. That would go back to when

14 I was in New York. I'm a Californian and

15 have been for sometime. So it would go

16 back to the time period when we were in

17 front of the Federal Court, and the Court

18 was deciding as to whether or not -- who

19 would be the lead plaintiff in this matter.

20 Q. Okay. And was that the last time

21 you met either Mr. Brower or -- or

22 Mr. Kerr?

23 A. Personally, yeah.

24 Q. Okay. And have you been in

25 contact with them telephonically or

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electronically since then?

A. Yes.

Q. About how often?

A. With -- with some frequency and regularity, I understood that it was my obligation to have a supervisory role. And, so, I received documents from them regularly, especially at the beginning of the case. I had numerous conversations, mostly with Mr. Kerr. And certainly in the first six months, it was probably every few weeks and sometimes more than once a week.

In the last two years, there have been numerous occasions, I would -- I would say monthly, but then there have been times when I have not heard from them, and I have contacted Mr. Kerr because of my obligation to do so. And we've had discussions, and he has, on some occasions, just indicated there was -- there was nothing happening, and that we would discuss the case further when there was some change of circumstances.

So there were times when perhaps

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1 we did not talk for -- for two months. But
2 we were in frequent contact. There were
3 documents to review. I often called him
4 back and asked him questions about the
5 documents. I have a legal background, as
6 you may know, but it's not in a civil area,
7 and it's certainly not in a financial area.
8 So while I am curious and interested in
9 knowing what is going on and made inquiry,
10 he was always quick to get back to me and
11 to consult with me about the proceedings in
12 the case and decisions that needed to be
13 made.
14

15 Q. Did -- were you provided drafts
16 of documents that would be served on the
17 defendants in this case before they went
18 out?

19 A. Yes.

20 Q. And did you comment on them?

21 A. Yes.

22 Q. Okay. And you reviewed, for
23 example, document requests before they were
24 served?

25 A. I'm not sure what you mean by

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2 "document requests."

3 Q. Okay. Are you aware of a process

4 known as discovery?

5 A. I am.

6 Q. Okay. And what mechanisms are

7 you aware of that can be used during the

8 discovery process?

9 A. That would go back to law school

10 and federal procedure. So I'm not really

11 familiar with the federal process or the

12 federal discovery of process beyond the

13 fact that there is such a process and that

14 it's available to both parties and that the

15 Court controls it.

16 Q. Do you recall reviewing drafts of

17 requests for the production of documents?

18 A. I do -- I do believe that I've

19 reviewed documents of that nature.

20 Q. And do you know what an

21 interrogatory is?

22 A. Yes, I do.

23 Q. And did you review drafts of

24 interrogatories before they were served?

25 A. I cannot say that I have.

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2 Q. Okay. And did you provide
3 responses, for example, to document
4 requests that were served by the
5 defendants?

6 MR. BROWER: On him.

7 MR. HYLAND: On -- yes, yes.

8 Q. On you.

9 MR. HYLAND: Fair.

10 A. I believe so.

11 Q. Okay. And did you review
12 interrogatories that were served upon you
13 by the defendants?

14 A. I believe I actually did that,
15 yes.

16 Q. Okay. Are you aware of any
17 depositions that have taken place in this
18 case?

19 A. I'm aware of one.

20 Q. What's that?

21 A. I believe it was of a Mr. Druker.

22 Q. Okay. And are you aware of any
23 depositions that are currently scheduled?

24 A. I -- I think I heard you
25 gentlemen discuss one earlier today, but I

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2 don't know of who -- of who it was.

3 Q. Okay. Are you currently, you
4 know, taking any medication that possibly
5 could affect your recall or your ability to
6 answer truthfully?

7 A. No, I'm not taking any medication
8 that could -- could affect me.

9 Q. Okay. It's just a standard
10 question.

11 A. No, that's -- that's quite --
12 that's quite all right. I'm not
13 particularly good with names, and --

14 Q. Okay.

15 A. -- and sometimes dates are very
16 difficult as well.

17 Q. Okay. Can you describe your
18 educational background.

19 A. I'd be delighted.

20 I went to P.S. 188 in Coney
21 Island through the fifth grade. I then
22 went to P.S. 209 through the -- was it the
23 ninth grade, And then I went to Abraham
24 Lincoln High School in Brooklyn through
25 high school. I went to Brooklyn College

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for four years. I went to Boston University of Law School and graduated in 1971, I believe.

As to further education, I -- I have taken -- I have gone to the judicial college in California. That was a week-long college on what a judge needs to or ought to -- ought to know. I've taught at the judicial college. I've also trained hundreds of judges in the area of alternative treatments to prison for drug addicts, persons with mental disabilities, individuals who have various problems that can be best dealt with in a noncustodial setting. And that has been something that I have been -- been doing actively for over 20 years.

Q. Okay. And Brooklyn College -- you graduated from Brooklyn College.

A. That's correct.

Q. When?

A. I think it was '68.

Q. So you went directly from college to law school?

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2 A. Correct.

3 Q. And then upon graduating from
4 Boston University in 1971, what did you do?

5 A. I went to work -- I actually had
6 an unusual situation. I was working for
7 Ralph Nader, and I believe it was the
8 center for -- I'm trying to remember now --
9 I think Center for Democratic Action. I
10 wrote a book on water pollution law for him
11 and also for the National Resources Defense
12 Council. And I -- I worked for both
13 companies -- well, certainly, Ralph Nader
14 wasn't a company, but it was a -- they were
15 both non-profits -- from 1971 through
16 sometime in '72, perhaps early -- early
17 '72.

18 Q. Okay. And what did you do after
19 that?

20 A. Okay. After that, I -- I took a
21 trip. It was an opportunity. I took the
22 bar exam, and I passed the bar exam in
23 California. And -- and I had an
24 opportunity to take a trip and with -- and
25 I did take a trip. I traveled perhaps to

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40 countries over a period of a year and four months, returning to the United States in 1974, and had -- and looked for a job specifically in -- in the criminal law.

I don't know if -- if this anecdote is appropriate or not, but in Nepal, as I was preparing to -- to climb -- to -- to take -- to do a climb in the Himalayas, I happened to -- to run into a public defender from Oakland, which is where I was living. And, so, over the next 30 days, I was regaled with stories about criminal law and decided that it was something that I was interested in. And when I came back, I applied for a number of jobs in the Bay area, which was where I was living, and I -- I took a job in Santa Clara County.

I'm assuming you want me to continue?

Q. I just want to go through your -- your education and your work history briefly, you know. That's okay.

A. Okay.

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2 Q. So --

3 A. We can go into great detail as
4 well.

5 Q. No, that's okay. Just -- I'd
6 just like a general chronology, if I could,
7 of your -- of your work history.

8 So you came back from the trip,
9 and you got involved in criminal law?

10 A. I got -- I became a public
11 defender in Santa Clara County. I was
12 there for perhaps two and a half years. I
13 had applied for a job in Alameda County
14 because of -- I was living in Alameda
15 County in Oakland. It was a far shorter
16 commute by far.

17 And I was -- I applied for and
18 I -- I was accepted as a public defender in
19 Alameda County. I was there for -- for
20 less than a year. And I went into private
21 practice. I was in private practice with a
22 law firm of Talbert Ellis. Luke Ellis was
23 my partner for -- and we added a third
24 attorney. Her first name eludes me. Her
25 last name is Frederick. It will come to me

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in a moment.

Q. Okay.

A. And we did almost all criminal law. That was -- that was my background. I've done some civil in the family law area, but almost entirely criminal since I have been a lawyer in California.

And so I did that, oh, perhaps 10 -- 10 years, 10 to 12 years. And in 1985, I believe, I was selected to be a commissioner, which, I suppose, is similar to a magistrate in the federal system, which means that you're doing the work the judges don't want to do.

And I did that through '88, I think it was about for two and a half, three years. At that point, I -- there was a judgeship that had opened up, and -- it was about to open up. There was a -- the judge who was -- was reaching the end of his term, and this background, I suppose, would be helpful.

At that time, in California, a judge had to resign by the age of 70 or he

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would lose something like -- I don't know if it was 40 or 50 percent of the pension. So it was quite a penalty. That's been changed to a significant extent -- extent since then. But at the time, that was the case. Anyway, he was running for eight months -- for an eight-month term, and I decided that I might consider running. And I spoke to a number of people about that possibility. And there was an election that I won with 68 percent of the vote and became the judge in that -- in that district.

I could go on about that election --

Q. No, that's okay.

A. -- at great length, if you'd like.

Q. No, I --

A. It was quite an interesting experience.

MR. BROWER: Nice job.

Q. Yeah. No, that's all right.

In -- in what -- in what court

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did you become a judge in?

A. It was the Oakland Piedmont
Emeryville Municipal District.

Q. And that's -- that's an elected
position.

A. Yes, sir.

Q. And for -- what is the term?

A. Six years.

Q. And you served as a municipal
district judge for a six-year term?

A. I did. And then I was elected
again.

Q. To the same court.

A. That's correct.

Q. Okay. And what types of cases
did the municipal district court hear?

A. Well, it's pretty much everything
except felony jury trials. We were going
through a transition, and so a number of
courts were allowing the municipal courts
to do superior court trials. This was done
on a case-by-case, county-by-county basis
which the Administrative Office of Courts
was controlling. I'm not sure that I did a

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felony trial. I mean, I did many felony trials as a -- as a defense attorney. But as a judge, I did, oh -- I did many, many misdemeanor trials. I couldn't tell you if it was more -- more or less than 100 trials --

Q. That's okay. But --

A. -- at the time.

Q. -- did the municipal district court just hear criminal cases, or did it hear civil cases also?

A. You know, it heard small claims, of course. It heard civil cases, unlawful detainers, as I recall, and similar cases. The jurisdiction for civil cases in municipal court -- I'm trying to recall now, because I was not really doing them. That was not my -- my responsibility. I think it was \$25,000 at the time.

Q. All right.

A. In 1997, the municipal court was eliminated, and all judges in California became superior court judges. There is no municipal court since then.

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Q. And did you become a superior court judge then?

A. I became a superior court judge through my work. My designation is a municipal court judge. But for the past 13 years, I have sat as a superior court judge only. And I have sat probably something -- at least 50 percent of the time in the last 12 years. But I've -- I've skipped quite a bit. I don't know if you want -- if you want the whole story.

In 19 -- I was elected, and in 1995, the chief justice granted me a leave of absence. It was the second time it had ever been granted in California to go to Washington to set up a training and education institute for judges and other criminal justice personnel and other -- and other personnel dealing with drug, alcohol, mental health, and other alternative treatments to prison. And, so, I was given a year's leave, and I left in '96. And in '97, by constitutional edict, one either has to return to the bench or resign. And

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I chose to resign and stay in -- and stay in Washington, D.C. and -- and continue with the work I was doing.

When I got to -- to Washington, I think there might have been 50 at most of these courts. When I left Washington in 2001 or 2002, there were over a thousand. It was a very productive time and an extraordinary opportunity that I've always felt very positive about. I felt really blessed to have that opportunity. There were obviously sacrifices involved when you do something like that as well. But it was, I think, extremely successful.

Today, that organization is called National Association of Drug Court Professionals, has a membership -- or in terms of the number of courts, there's over 3,000 courts in the United States that are providing this -- this service.

To get back to myself as a judge, sometime right after I resigned, within a year, I believe, all judges became superior court judges. When I returned to

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California, I was asked to become a -- an assigned judge.

And I'm sure you're familiar with the concept where if I'm available, and there's a need for a judge, I would be asked to -- to sit on -- on a -- on a court. And I did so, as I mentioned, probably in -- at least 50 percent of the time over the next 12 or 13 years, probably closer to 60 or 70 percent. And at all times during that period of time, I was a superior court judge.

Q. Do you still sit as a superior court or any other kind of judge?

A. I only sit as a superior court judge.

Q. You still do as of today?

A. Well, an assigned judge -- well, I'm also a senior judge as -- and that's more an issue of age than anything else. But I sit as an assigned judge. I most recently served for over a year in Marin County. And in November, they indicated that they no longer needed a criminal

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2 judge, and they wanted a civil judge. And,
3 so, that association changed. Most of the
4 -- or many of the courts I sat on, I've sat
5 on for years. I was on the San Francisco
6 Superior Court for four years.

7 Q. When was that?

8 A. That would have been from 2008
9 through 2011, through the end of 2011. I
10 think it ended in October or November, if
11 I'm not mistaken.

12 Q. All right. And you talked about
13 your -- your resigning as a judge, I think
14 you said pursuant to constitutional edict;
15 is that right?

16 A. Yeah.

17 Q. When was that?

18 A. That would have been January --
19 well, a year would have been in January. I
20 left -- I was given that -- that year's
21 leave starting in January of 2006. So I
22 would have proffered my resignation, no
23 doubt, in January of 2007.

24 Q. And --

25 A. I received -- obviously, they

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accepted my resignation. They also provided me with a -- with a commendation for the work I had done in Washington, D.C. and around the world in -- on behalf of offenders and individuals with drug and -- and other serious problems. So it was a -- it was a fairly happy sendoff.

Q. And what is your age?

A. 67.

Q. Okay. So when you tendered your resignation, that was in or about -- as a judge -- in or about 2007?

A. Yeah. It was --

Q. Whatever, give or take.

A. -- probably within the first --

Q. Okay.

A. -- first week, I would think.

Q. So you were about 60 years old at the time, thereabouts?

A. No. Let's -- let me think. Let me go back. I was more like -- was it 51? I'm just -- I haven't even thought of this in such a long time. I remember in my first year, I turned 50. So, I mean, my

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2 first year in Washington. So I believe it
3 was something like 51. I think I was in
4 Washington through 2001.

5 Q. Okay.

6 A. So I was in my early 50s.

7 Q. When you resigned.

8 A. When I resigned, yeah.

9 Q. What was the constitutional edict
10 that required you to resign as a judge?

11 A. Well, you know, I never -- I
12 never researched it. I was told by the
13 Administrative Office of the Court that --
14 that I would either have to return, which
15 they would gladly have me do, or resign.
16 And I had been given that information by
17 more than one individual, not only from the
18 AOC, but from my court. And on that basis,
19 I resigned.

20 And the fact is that the work
21 that I was doing in Washington was -- was
22 having such an extraordinary effect and, to
23 some extent, unexpected. It was -- it was
24 perhaps at the right time, being in the
25 right place at the right time. And the

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organization itself is probably the most influential in the criminal justice field in the United States at this time. And being at the beginning of that and helping to create that was something that seemed to me more important than returning to be a superior court judge or a municipal court judge.

Q. I think you said you were granted a leave of absence to go to Washington to work on the -- the drug and substance-related issues?

A. Yeah.

Q. Right?

And who granted you that leave of absence?

A. It was the chief justice.

Q. And who was that?

A. Ron George.

Q. Had you requested a leave of absence?

A. It was requested -- I'm trying to remember. I know that -- that there were a number of judges that -- that were

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supporting that -- that request. I was -- at the time, I was chairman of the board of this organization. But it was a fledgling organization that, basically, I was running out of the courtroom, rather, the courtroom than other out of my chambers. So it was -- it was clear that there was an opportunity that -- for a national grassroots organization to take off, and someone would have to go to Washington to make it happen, and I was willing to do it.

Q. Right. But did you ask for the leave of absence so you would be able to do that? Was that something --

A. Did Ron George ask me?

Q. I'm sorry?

A. Is that the question?

Q. Yeah. In other words, you said you were granted a leave of absence.

Did you request it, or were you asked to do it?

A. I was asked to do it by my contemporaries --

Q. Okay.

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2 A. -- and my colleagues and the
3 members of the organization that I -- that
4 I was chair of at the time.

5 Q. Right. Okay.

6 So -- and was the concept of drug
7 courts and, you know, reform, which you
8 testified to, was that something that you
9 were interested in at the time?

10 A. Yeah. I thought it was -- it was
11 an extraordinarily important reform.

12 Q. Okay. And you said that there
13 were sacrifices involved in your, you know,
14 leaving the West Coast and going to the
15 East Coast.

16 What sacrifices did you have in
17 mind?

18 A. Well, the most obvious is -- is
19 leaving your home and leaving your -- your
20 employment.

21 Q. Are you -- are you currently
22 employed?

23 A. I'm currently -- I'm currently an
24 assigned judge or a member of the Assigned
25 Judges Program, which means that I am -- I

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1 don't know what the best way -- how to put
2 this. But if you are part of that program,
3 and you've fulfilled the obligations of
4 education and -- and so forth, then you are
5 eligible to be requested by a jurisdiction.
6 And, so, I have probably -- in the last 12
7 or 13 years, I have probably sat in easily
8 20 courtrooms and 12 counties in Northern
9 California.
10

11 Q. Okay. How do you get paid? Do
12 you receive a salary, or do you get paid by
13 the case?

14 A. No. You get -- you get paid by
15 the day. It's basically per diem.

16 Q. Right. Okay.

17 And, so, when is the last time
18 that you had just a regular salary that was
19 a steady salary that was paid to you on a
20 regular basis?

21 A. That would probably be when I was
22 president of the National Association of
23 Drug Court Professionals, which would
24 have -- which would have been in 2001.

25 Q. 2001?

1 Tauber - Confidential 39

2 A. Yeah.

3 Q. Okay. So since 2001, is it fair

4 to say that you've -- you've been paid on a

5 per-diem basis when -- when requested and

6 when you serve on a particular case?

7 A. It's not a case.

8 Q. Okay.

9 A. You're -- you're often asked

10 to -- to step in when a judge becomes ill,

11 dies, is elevated, is on -- for some

12 reason, is not available to the court. So

13 -- and some courts just have a great deal

14 of -- of work. And --

15 Q. Right.

16 A. -- they can't -- they can't deal

17 with it, and so they ask for someone to

18 assist.

19 Q. All right.

20 And you get paid on a per-diem

21 basis.

22 A. Correct.

23 Q. And what's the per diem that you

24 get paid?

25 MR. BROWER: Objection.

1 Tauber - Confidential 40

2 A. I think it's -- it's just under

3 \$700 a day.

4 Q. \$700 a day?

5 A. \$700 a day, I think.

6 Q. Okay. And what was it back in

7 2007?

8 A. Probably about the same. I don't

9 think there have been too many raises since

10 then.

11 Q. Right. Okay.

12 And where do you live?

13 A. I live in a small town called

14 Albany, which is just outside of Berkeley,

15 California, which is in the East Bay of the

16 San Francisco Bay.

17 Q. And what's your address?

18 A. 843 Washington Avenue.

19 Q. 843 Washington Avenue?

20 A. Yeah.

21 Q. Okay. And how long have you

22 lived there?

23 A. Approximately a year.

24 Q. One year?

25 All right. Do you own it?

1 Tauber - Confidential 41

2 A. No, I don't.

3 Q. You pay rent?

4 A. I live there with my girlfriend,

5 and we share rent.

6 Q. Okay. So you're not married.

7 A. I am not remarried.

8 Q. Have you ever been married?

9 A. Yes, I have.

10 Q. During what period of times --

11 time?

12 A. '91 through '99, '98, '99.

13 Q. Any other time that you were

14 married?

15 A. Do you want to know her name?

16 Q. That's okay.

17 A. Okay. What would you like to

18 know?

19 Q. You were married from '91 to '99?

20 A. I believe.

21 Q. Approximately, right?

22 A. Approximately.

23 Q. Other than that, have you ever

24 been married?

25 A. No.

1 Tauber - Confidential 42

2 Q. Do you have any children?

3 A. No.

4 Q. Have you -- have you ever been
5 convicted of any kind of a crime? And that
6 would include misdemeanor.

7 A. No.

8 Q. Have you ever had any sort of
9 crime expunged from your record?

10 A. No.

11 Q. Have you ever been charged with
12 any kind of substance-related offense?

13 A. No.

14 Q. Okay. Never been charged with a
15 DWI or anything like that?

16 A. No.

17 Q. Okay. Have you ever sought
18 treatment for any kind of substance abuse?

19 A. No.

20 Q. And before you lived at your
21 current residence, where did you live?

22 A. 1357 Marin Avenue in Albany, not
23 far from where I currently live.

24 Q. Okay. And did you own that
25 residence?

1 Tauber - Confidential 43

2 A. No, I did not.

3 Q. You paid rent?

4 A. I did.

5 Q. And how about -- how long did you

6 live there?

7 A. I think it was almost five years.

8 Q. And how about before that?

9 A. I lived in Berkeley Hills. I had

10 a home that I did own. It was on Cragmont

11 Avenue, but I couldn't tell you the -- I

12 couldn't tell you the address.

13 Q. Okay. So you owned that, and you

14 lived there?

15 A. Yeah.

16 Q. And you sold it?

17 A. I did.

18 Q. When did you sell it?

19 A. I sold it in 19 -- excuse me --

20 not 19. It would be probably 2008.

21 Q. Okay. Do you currently trade in

22 the stock market?

23 A. No.

24 Q. You don't?

25 A. No.

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2 Q. You don't have any brokerage
3 accounts --

4 A. No.

5 Q. -- that are active?

6 A. I think Fidelity may have \$150 in
7 an IRA, but that's -- as far as I know,
8 that's the only thing I have.

9 Q. Okay. Was there a time when you
10 traded securities?

11 A. There was.

12 Q. And during what period of time
13 did you trade securities?

14 A. Well, I had an IRA, and -- during
15 my career, and, so, I had -- I had
16 securities, but I -- but they weren't
17 anything that I controlled. In other
18 words, they were -- they were part of a --
19 of a -- I forgot the word -- just --

20 Q. A discretionary account?

21 A. No.

22 Q. No.

23 A. Not a discretionary account. I
24 think they were -- I think I had it with --
25 well, it was -- you know, you -- quite

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1
2 frankly, you just put money -- you put
3 money into an account, and, basically, it's
4 something that -- that is taken care of
5 without any interference. And I know
6 that's not a very sophisticated
7 description. But it -- it was a -- and I'm
8 just trying to remember who I had it with.
9 But I -- I can't -- it was one of the
10 larger -- one of the -- it was a fund.
11 Okay. It was a fund.

12 Q. Okay. So you had a -- you had a
13 Fidelity account, correct?

14 A. Right.

15 Q. And you made investment decisions
16 with respect to the assets in that account,
17 correct?

18 A. Correct.

19 Q. Meaning you would -- you would
20 make the decision to buy or sell the
21 securities that were held in that account,
22 correct?

23 A. Yes.

24 Q. And how many -- and that was at
25 Fidelity?

1 Tauber - Confidential 46

2 A. Yeah.

3 Q. How many Fidelity accounts did

4 you have?

5 A. I had three.

6 Q. Three?

7 And what were they?

8 A. One was an individual account.

9 One was, I believe, an IRA, and the other

10 one was a 401k, I think, if I'm not

11 mistaken.

12 Q. Okay. So two were

13 retirement-type accounts.

14 A. Yeah.

15 Q. And one was just an individual

16 account?

17 A. Right.

18 Q. All right. And did you have --

19 when you traded, did you have any sort of

20 investment thesis that you followed?

21 A. I was interested in the tech

22 field, and I thought that -- that that was

23 an area where there was the possibility of

24 significant investment --

25 Q. Okay.

1 Tauber - Confidential 47

2 A. -- opportunities.

3 Q. Did you -- did your investment
4 thesis differ whether you were trading your
5 -- your own personal account or your two
6 retirement accounts?

7 A. Not really.

8 Q. You basically traded them the
9 same way, the three accounts?

10 A. Yeah.

11 Q. Okay. And for how long did you
12 trade securities?

13 A. I'm trying to remember. I
14 believe I started the Fidelity account in
15 2004/2005.

16 Q. All right. Before that, before
17 2004/2005, had you traded securities?

18 A. Never.

19 Q. Never?

20 A. Only as I indicated through a --
21 through a fund.

22 Q. Right. Okay.

23 And when you say through a fund,
24 you purchased shares in a fund, and the
25 fund had its own thesis and would buy and

1 Tauber - Confidential

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2 sell securities.

3 A. Yeah, yeah.

4 Q. All right. Like -- and was that
5 with Fidelity?

6 A. You know, it wasn't. It was --
7 it was with one of the -- one of the -- the
8 large funds that went out of business
9 during the recession. So --

10 Q. Okay. And you say that you don't
11 trade securities anymore?

12 A. No.

13 Q. And why not?

14 A. Well, as they say, hindsight is
15 20/20. I -- looking back on -- on my -- my
16 career in trading stocks, I can see that
17 even though I -- I tried to be diligent,
18 and I did everything I could to be as
19 knowledgeable as possible, that the stock
20 market is a very difficult mechanism for
21 making money, and one can lose a good deal
22 of money as well as make a good deal of
23 money.

24 Q. And -- and what happened to the
25 three accounts that you had at Fidelity, or

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two retirement-type accounts and your individual account?

A. I -- I lost a great deal of money, especially with my Sigma account. And I think I closed them out perhaps two years ago. But there were just a few thousand dollars left. They had -- they had diminished greatly over the period of time. I -- I think that's probably the best way to describe it.

Q. So is it fair to say that your three Fidelity accounts -- your two retirements accounts, and your individual account -- they were depleted because of losses in trading?

A. Yes.

Q. Had you made any withdrawals from those accounts?

A. Well, it depends when you -- when. I made withdrawals after 2008, but I don't think they were very large.

Q. All right. By very -- you don't think they were very large.

What number are you talking

1 Tauber - Confidential 50

2 about?

3 A. I can't imagine that they would

4 be more than \$20,000.

5 Q. Okay. All right.

6 And you said you -- you lost

7 mainly your, quote, Sigma account?

8 A. Mainly.

9 Q. All right. During the class

10 periods, though, that are involved in this

11 case, you made money during those periods

12 in trading Sigma, correct?

13 A. I cannot -- I cannot say.

14 Q. You cannot say because you

15 haven't added up -- added up the trades?

16 A. I cannot say because I haven't --

17 I haven't looked at that in several years.

18 Q. Okay.

19 A. This is not a particularly --

20 something I -- I -- I like to dwell on.

21 Q. I understand.

22 During the -- the period that you

23 were trading shares, approximately how many

24 different securities did you trade?

25 A. At different companies, different

1 Tauber - Confidential 51

2 stocks?

3 Q. Yes.

4 A. It would -- it would certainly be

5 less than 50, more than 20.

6 Q. At any given time?

7 A. Now I'm talking over -- over the

8 period.

9 Q. All right. So just take, for

10 example, the -- the class periods in this

11 action, right, which go back to 2007 and

12 part of 2008.

13 A. Yeah.

14 Q. During that timeframe,

15 approximately how many securities would you

16 be trading at -- at the same time? How

17 many positions would you hold?

18 A. I would say less --

19 MR. BROWER: Objection to form.

20 A. I'm sorry?

21 Q. I'll rephrase the question.

22 During the -- during the class

23 periods --

24 A. Yeah.

25 Q. -- involved in this case --

1 Tauber - Confidential 52

2 A. Yeah.

3 Q. -- which go from, I think,
4 approximately the middle of 2007 to the
5 first quarter of 2008 --

6 A. Yeah.

7 Q. -- at any given time,
8 approximately how many different securities
9 would you own?

10 A. Less than ten.

11 Q. Okay. Do you recall what any of
12 them were back during the time of the class
13 period involved here?

14 A. I can recall -- one of them was
15 called LNOP, I think, which was an Israeli
16 company, tech company.

17 Q. Were they all tech companies?

18 A. I don't think they were all tech
19 companies, no.

20 Q. Aside from the tech companies,
21 what -- what industries were they involved
22 in?

23 A. Let's see. I think I had -- I
24 had some shares in -- in some drug
25 companies. Now, if we're talking about the

1 Tauber - Confidential 53

2 period -- I have a hard time remembering
3 whether it's within that period. I
4 think --

5 Q. Okay.

6 A. But I did have some -- some
7 medical or -- or medical devices, drug
8 companies -- that's all I can think of at
9 the moment.

10 Q. Okay. And at the time that you
11 started trading securities for your own
12 account, approximately how many did you
13 start out with?

14 A. I'm not clear on the question.

15 Q. Okay. Fair enough.

16 When -- when did you first start
17 trading securities for your own account?
18 About 2004?

19 A. 2004, 2005, somewhere in there.

20 Q. Okay. When you started doing
21 that, how many -- how many positions of
22 different companies did you have at one
23 point?

24 MR. BROWER: Objection to the
25 form.

1 Tauber - Confidential 54

2 A. At one point, I'm not sure -- I'm
3 not sure I could answer that.

4 Q. All right. When you opened it
5 up, did you -- were you -- was it -- were
6 you only trading one company? Was it more
7 than one?

8 A. I wasn't trading companies at
9 first. I was -- I was trading funds.

10 Q. When is the first time that you
11 started trading companies?

12 A. Probably six months to a year
13 after I was -- after I had opened my
14 account at Fidelity.

15 Q. All right. And when you started
16 trading your own securities, you making the
17 investment decisions on what to buy and
18 what to sell --

19 A. Right.

20 Q. -- approximately how many
21 positions did you have at one time?

22 MR. BROWER: At any one time?

23 MR. HYLAND: At the -- at the
24 time he -- at the time he started.

25 MR. BROWER: When they opened the

1 Tauber - Confidential 55
2 account?
3 MR. HYLAND: When they opened the
4 account, the first few months, call it.
5 A. Well, as I said, I didn't -- I
6 didn't trade in individual companies
7 immediately.
8 Q. Right.
9 A. It would have been six months to
10 a year, and I probably started out with two
11 or three initially.
12 Q. All right. When is the first
13 time that you purchased or sold a security
14 issued by Sigma?
15 A. Oh, wow. Well, I guess it must
16 have been 2006, I think.
17 Q. Okay. Why were you interested in
18 Sigma?
19 A. I -- I was really looking for,
20 you know, the best investment
21 opportunities. I would read tech
22 magazines. I'd read -- I became
23 involved -- not involved, but I followed
24 what's called, I think, George Gilder's
25 newsletter. I would go to the Yahoo. You

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1 know, I would -- I would read everything I
2 could. I would try to be knowledgeable.
3 And Sigma came to my attention through some
4 of the people that were investing through
5 George Gilder, or not through him, but --
6 but were discussing him or this particular
7 stock on -- on the Gilder website.
8

9 Q. And did you speak to anyone about
10 possibly investing in Sigma?

11 A. I don't think I ever spoke to
12 anyone. I think -- if we're talking about
13 before I began to -- to invest, I would
14 follow it -- follow the conversation. And
15 mostly, I would follow conversations. I
16 wasn't a very active participant. I didn't
17 think I really -- at least at that point, I
18 wanted to learn. I wasn't -- didn't think
19 that I necessarily had -- had information
20 that was especially useful to others.

21 So I listened, and I watched, and
22 I read what people were saying about it.
23 And it was -- I think, initially, it was
24 less than \$10 a share when I first heard
25 about it. And that -- that might have been

1 Tauber - Confidential 57

2 in the fall or the summer of 2006. I'm not
3 sure.

4 Q. Did you consult any financial
5 professional about investing?

6 A. Not really.

7 Q. Okay. Did you read any books?

8 A. Yeah.

9 Q. Can you identify any of them?

10 A. There were one or two books that
11 I -- that I got, I think on -- on trading
12 in the stock market that a picked up,
13 general books on -- on trading and
14 investment strategies. And there was at
15 least one Motley Fool book for the same
16 purpose. And there were -- you know, I'd
17 follow Yahoo and read what I could on -- on
18 stocks and -- and the tech field because
19 it's not something that I know a great deal
20 about. And I did my best to educate
21 myself.

22 Q. When you say you read -- you read
23 Yahoo, are you referring to the Yahoo blogs
24 on certain securities?

25 A. Well, I also was reading Market

1 Tauber - Confidential 58

2 Watch -- is it called Market Watch?

3 Q. Okay. Okay.

4 A. Very -- very carefully, I was,
5 you know, once again, trying to -- to
6 become somewhat knowledgeable. And -- and
7 I would read -- I would certainly read the
8 blogs of any stocks that I was -- and I
9 don't mean -- by blogs, I guess we're both
10 talking about a chat -- more or less, a
11 chat room.

12 Q. Okay, right. Yeah.

13 A. I mean, there would occasionally
14 be -- be information that was from the
15 company or -- or they would reference
16 articles in other places, which I would go
17 to consistent with.

18 Q. Right. Okay.

19 Can you describe mechanically the
20 process that you followed when you placed
21 an order to purchase or sell a security.

22 A. Well --

23 MR. BROWER: Objection.

24 Foundation.

25 Q. Well, I'll rephrase.

1 Tauber - Confidential 59

2 A. Okay.

3 Q. Did you make -- was it your
4 practice to make investment decisions
5 yourself in buying and selling Sigma?

6 A. Yeah.

7 Q. Same question with respect to
8 other securities.

9 A. Yeah.

10 Q. And when you made a decision to
11 buy or sell, for example, Sigma, how did
12 you go about effectuating the transaction?

13 A. Well, I would use the Fidelity
14 online stock-trading mechanism, which I
15 imagine is like -- like most of them. They
16 basically give you an opportunity to -- to
17 purchase stocks in realtime, and -- and I
18 would -- I can't think of -- of any stocks
19 that I purchased other than through
20 Fidelity.

21 Q. All right. So you did it
22 entirely online?

23 A. I think there were some trades
24 where I actually called Fidelity to -- to
25 make the trades --

1 Tauber - Confidential 60

2 Q. Okay.

3 A. -- in a few instances. But other

4 than that, it was -- it was almost all

5 online.

6 Q. All right. So you would input

7 the transaction on your computer?

8 A. Yeah.

9 Q. Correct?

10 A. Yeah.

11 Q. You'd log into your Fidelity

12 account.

13 A. Yeah.

14 Q. And you would --

15 MR. BROWER: Let him finish the

16 question.

17 Q. You -- and you would place the

18 order online, correct?

19 A. Correct.

20 Q. And then what happened after you

21 did that?

22 A. I'm not sure what you mean by

23 "what happened." I would get a -- I would

24 get a letter confirming.

25 Q. All right.

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2 A. I would also -- there would also
3 be an online confirmation of -- of some
4 sort. And it would be reflected in -- in
5 my shares and also my account.

6 Q. Right. And did you keep -- did
7 you keep those records?

8 A. You know, I -- I've moved twice.
9 I -- I really haven't kept any of those
10 records.

11 Q. All right. At the time, did you
12 keep the records?

13 A. Well, I did -- I did at that
14 time.

15 Q. All right. And did you reconcile
16 your -- did you get a monthly statement
17 from Fidelity?

18 A. Yeah.

19 Q. And did you check the monthly
20 statement?

21 A. Yeah.

22 Q. Did you ever have any disputes as
23 to the accuracy of the information
24 contained on the statements that you
25 received?

1 Tauber - Confidential 62

2 A. No.

3 Q. Okay. How did you compute your

4 -- your gains and losses on your securities

5 trading?

6 A. I'm not sure -- I'm not sure

7 about your question.

8 Q. Okay. So you were trading -- you

9 might have been trading maybe ten

10 securities at any given time during the

11 class period, correct?

12 A. I think that's fair.

13 Q. All right. So that means you're

14 buying securities and you're selling

15 securities?

16 A. Yeah.

17 Q. How did you calculate your amount

18 of losses and your amount of gains for

19 income tax purposes?

20 A. Well, I basically turned over my

21 Fidelity account information to my

22 accountant, and he would make those

23 calculations.

24 Q. Okay. And did he make those

25 calculations with respect to each security

1 Tauber - Confidential 63

2 that you traded?

3 A. This goes back a number of years.

4 I don't -- I don't have a specific

5 recollection.

6 Q. All right. And did your

7 accountant provide you with documents

8 showing your profits and losses?

9 A. I received a -- my tax document

10 or tax return that -- that would be the --

11 the sum total of it.

12 Q. All right. And who was your

13 accountant back in 2006 through 2008?

14 A. David Kobe.

15 THE WITNESS: I'm sorry?

16 MR. BROWER: Nothing.

17 Q. I'm sorry?

18 A. David Kobe, K-O-B-E.

19 Q. Okay. Is he still your

20 accountant?

21 A. Yes, he is.

22 Q. Okay. And where is he located?

23 A. In San Francisco.

24 Q. All right. And do you know

25 whether -- what method that was utilized in

1 Tauber - Confidential 64

2 computing profits and losses on your

3 trades, like a first in/first out, last

4 in/first out? Do you know what was -- what

5 kind of methodology was -- was used?

6 A. No.

7 Q. Okay. Aside from your Fidelity

8 account, have you ever had any other

9 account through which you purchased or sold

10 securities, aside from that fund that you

11 identified before?

12 A. Right.

13 MR. BROWER: And not including

14 the 401k or the IRA.

15 Q. I -- I am including that, because

16 that was held at Fidelity, right?

17 MR. BROWER: Oh, I'm sorry. You

18 said account.

19 MR. HYLAND: I'm sorry.

20 MR. BROWER: Private accounts.

21 MR. HYLAND: Thank you.

22 MR. BROWER: I thought you were

23 referring to the individual account.

24 MR. HYLAND: I appreciate it.

25 Yes, okay.

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Q. Aside from the three accounts that you've identified at Fidelity, have you had any other accounts through which you purchased or sold securities?

A. No.

Q. All right. And when is the last time that you purchased or sold a security in your -- one of your Fidelity accounts?

A. Like I -- as I mentioned, I think there were a few thousand dollars remaining in my account -- one of my accounts a few years ago, and I withdrew that.

Q. All right. And aside from the two retirement accounts that you had at -- at Fidelity, do you have any other retirement accounts?

A. No. Well, I don't know what you mean by "retirement accounts."

Q. Any other 401k or Keogh or any other IRAs other than the --

A. No.

Q. -- ones that were represented in the Fidelity accounts?

A. No.

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2 Q. Okay. Now, what was it about
3 Sigma that got you interested?

4 A. As I've indicated, there was a
5 good deal of talk on -- on the -- on the --
6 in the -- in the Gilder chat room, if you
7 want to call it that. And that got my
8 interest, and I started to do some
9 research.

10 Q. What did you like about Sigma?

11 A. Well, what they were doing was
12 they were creating an interface that
13 allowed people who -- or allowed companies
14 to bring digital information into the home
15 to be distributed through the home. And at
16 the time, they were the only company that
17 had a device or device -- device
18 sophisticated enough to do that. And, so,
19 there was a lot of chatter about them.

20 There was a lot of -- I mean, not
21 just on Gilder, but -- but I believe
22 I've -- I read a number of articles, some
23 of which might have been in Market Watch,
24 and others, which suggested this was --
25 this was a real comer. I think even Motley

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Fool did several articles on it. And I started to -- to follow it closely.

Q. What did Sigma manufacture?

A. It was -- it's -- it's an interface device which allows different streams in the home to -- to divide and to provide data to any number of devices -- TVs, computers. And, I mean, that's -- that was -- as I recall, that was their main product. And it was a small company, and it had a very -- at the time, it had almost a monopoly, as I understood it, on such a device.

Q. All right. Were you aware of its competition?

A. I was aware that there were other companies that were far larger that could be competition.

Q. Who were they?

A. I don't remember.

Q. Okay. And during the time that you -- I may have asked it. I just want to make sure.

During the time that you traded,

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purchased, and sold Sigma, was there any person from whom you personally sought advice, either formally or informally?

A. Well, I -- I -- I -- you know, as I said, I -- I tried to -- to find or to locate information as best I could, which meant -- meant I went to a few informational conferences, where, not just Sigma, but a number of companies would have an opportunity to talk about their products and about their company and give information.

So I -- I went to more than one, perhaps two or three such -- such gatherings. I had an opportunity to speak briefly to their spokespersons during question periods and briefly afterwards. So I -- I became somewhat more acquainted with this particular stock than -- than any other.

Q. Okay. And what were the total -- back in 2007/2008, what were the total assets in your three Fidelity accounts?

A. You have to tell me when we're

1 Tauber - Confidential 69

2 talking about.

3 Q. Yeah, I did. 2007/2008.

4 A. I understand, but -- but the

5 amount -- are we talking amounts, or are we

6 talking --

7 Q. Yeah. The value.

8 What was the total value of your

9 three Fidelity -- Fidelity accounts?

10 A. Well, I mean, it -- it

11 fluctuated.

12 Q. Approximately what's the range?

13 A. At some point, it might have

14 been -- I don't know -- something over --

15 or in the neighborhood of \$2 million.

16 Q. 2 million? Yes?

17 MR. HYLAND: Should we take a

18 break?

19 MR. BROWER: Sure.

20 THE VIDEOGRAPHER: Stand by,

21 please.

22 The time is 11:02. This is the

23 end of Tape No. 1. We are off the

24 record.

25 (Recess)

1 Tauber - Confidential 70

2 (Mr. Kerr exited the conference
3 room.)

4 THE VIDEOGRAPHER: The time is
5 11:12 a.m. This is the beginning of
6 Tape No. 2. We are back on the record.

7 EXAMINATION CONTINUED

8 BY MR. HYLAND:

9 Q. Mr. Tauber, what was the source
10 of the money that was used in your three
11 accounts to trade securities? By "three
12 accounts," I'm referring to the Fidelity
13 accounts.

14 A. The IRA and the 401k were from my
15 -- my employers. And the individual
16 account was money that I had saved over the
17 years.

18 (Mr. Kerr entered the conference
19 room.)

20 Q. Was any portion in inheritance?

21 A. Yes.

22 Q. How much?

23 A. I believe -- I believe
24 approximately \$200,000.

25 Q. 200?

1 Tauber - Confidential 71

2 A. I believe.

3 Q. Okay. And do you recall, back in

4 2007/2008, how much -- what the total

5 assets were in your individual account?

6 A. You know, I think it was pretty

7 much half was in individual.

8 Q. Okay.

9 A. Half was in the IRA and the 401k.

10 Q. Okay. All right.

11 MR. HYLAND: And if I could mark

12 as an exhibit some -- 2 -- 2 and 3.

13 This is 2.

14 MR. KERR: That's 2 and 3?

15 MR. HYLAND: No, that's just 2.

16 That's your copy. I have a copy for

17 each of you.

18 MR. KERR: Thank you.

19 (A set of interrogatories was

20 marked as Tauber 2 for identification.)

21 MR. HYLAND: And this is 3.

22 (First amended interrogatories

23 were marked as Tauber 3 for

24 identification.)

25 Q. Just looking at Exhibit 2, do you

1 Tauber - Confidential 72

2 recognize this document, Mr. Tauber? It's
3 entitled "Defendants Sonar Capital
4 Management's, Neil Druker's, Sonar Partners
5 LP's, Sonar Institutional Fund LP's, and
6 Sonar Overseas Fund LTD's first amended
7 interrogatories."

8 (Pause)

9 MR. BROWER: Mr. Hyland, you
10 asked him if he sees the document?

11 MR. HYLAND: If he recognizes it.

12 MR. BROWER: Oh, okay.

13 Q. Have you seen it before?

14 A. I'd like to -- I'd like to read a
15 document before I -- before I answer.

16 (Pause)

17 A. Yes, I believe I have.

18 Q. Okay. And did you provide
19 answers to those interrogatories?

20 A. Yes, sir, I believe I did.

21 Q. All right. And if I could also
22 direct your attention to Exhibit 3. I
23 think those are document responses.

24 Have you seen those before?

25 MR. BROWER: Object to the form,

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but go ahead.

A. If I may.

Q. Yes, sure.

(Pause)

A. I believe I have seen this.

Q. Okay. And are those the responses that the plaintiffs submitted in response to the defendants' request for production of documents?

A. You know, I -- I -- I recall reviewing this and discussing this with counsel. As to whether or not this was, in fact, the document that was returned, I couldn't -- I couldn't answer at this point.

Q. When you say "document returned," do you mean returned to the defendants?

A. Correct.

Q. Okay. But do you recall reviewing a draft of the responses prior to the document being put in -- into final and served on the defendants?

A. I consulted with and reviewed the documents. And upon completion of that

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review and consultation, my attorney
returned the document, as I recall.

Q. And did you approve what is
marked as Exhibit 3, the responses to
Sonar's document requests?

A. I believe so.

Q. Okay.

MR. HYLAND: If I could mark as
Tauber Exhibit 4. That's the next
document.

(Objections and responses to
defendants' first amended
interrogatories were marked as Tauber 4
for identification.)

(Pause)

Q. And this is entitled "Plaintiff
Jeffrey Tauber's objections and responses
to Defendants Sonar Capital Management
LLC's, Neil Druker's, Sonar Partners LP's,
Sonar Institutional Fund LP's, and Sonar
Overseas Fund LTD's first amended
interrogatories."

I'd like to direct your attention
to the last page of the document.

1 Tauber - Confidential 75

2 A. The verification.

3 Q. There's a verification, right?

4 A. Yeah.

5 Q. And that's your verification?

6 A. That's my hand -- that's my

7 signature.

8 Q. All right. And that is your

9 signature verifying the accuracy of the

10 answers to the interrogatories set forth in

11 Exhibit 4?

12 A. I believe that's what a

13 verification is, and that's correct.

14 Q. All right. And when you received

15 the interrogatories -- you received the

16 interrogatories from counsel, which are

17 Exhibit 2, I believe, before you answered?

18 A. That's correct.

19 Q. Okay. And you provided the

20 answers in consultation with counsel to

21 these interrogatories?

22 A. That's correct.

23 Q. And after doing so, then you

24 signed the verification, and that's on the

25 last page?

1 Tauber - Confidential 76

2 A. That's correct.

3 Q. All right.

4 MR. HYLAND: The next document.

5 (A summons and complaint filed

6 February 23, 2006, was marked as Tauber

7 5 for identification.)

8 Q. Do you recognize what's been

9 marked as Tauber Exhibit 5?

10 A. I need a moment.

11 Q. Okay.

12 (Pause)

13 A. Yes.

14 Q. Okay. What is the document?

15 A. It's a suit that was brought in

16 the California court, and it was for my --

17 my fee for work done for the State Bar

18 Association.

19 Q. Okay. And you brought a suit

20 against the State Bar Association for a

21 breach of contract?

22 A. That's correct.

23 Q. Okay. And it's entitled -- the

24 first or the second page says "Summons."

25 And then there are several pages thereafter

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with questions and answers in which you
would check a box.

Do you see that?

A. Mm-hmm.

Q. Yes?

A. Yes.

Q. And did you check those boxes?

A. I believe -- I believe I -- I
did.

Q. All right. And you caused this
suit to be filed against the State Bar
Association?

A. I believe -- I believe so.

Q. Okay. And then if you take a
look towards the -- the back, we see a --
an exhibit dated August 11, 2002, and
that's a letter from you to Mr. Scott
Drexel.

Do you see that?

A. Yes, sir.

Q. And is that your letter to him?

A. I believe it is.

Q. And then after that, we see
another letter dated November 28, 2005, a

1 Tauber - Confidential

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2 two-page letter.

3 Do you see that?

4 A. I do.

5 Q. And that's a letter from you,
6 again, to Mr. Drexel?

7 A. That's correct.

8 Q. All right. And is it fair to say
9 that in this letter, you describe your
10 complaint against the Bar Association?

11 A. I believe that's correct.

12 Q. Okay. And did you prepare this
13 letter yourself?

14 A. I did.

15 Q. I'm talking about the
16 November 28, 2005, letter.

17 A. Yeah, I did.

18 Q. Okay. And you remember this
19 suit?

20 A. I certainly do.

21 Q. Okay. Did the suit get any
22 publicity?

23 A. The suit was settled -- was
24 resolved, and it was done so with an
25 agreement that the results were to be

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private.

Q. Okay. All right.

Did you consider it to be a rather serious matter to sue the Bar Association of the State of California?

A. I believe I indicate in here that it's a relatively minor matter.

Q. Okay. But it was your decision to bring the suit, right?

A. Yeah.

Q. If I could direct your attention to Exhibit 2.

A. Okay.

Q. Excuse me. Exhibit 4.

A. Four?

Q. Yeah.

A. I'm sorry.

(Pause)

Q. And these are your objections and responses to the defendants' interrogatories that were served on you?

A. I believe so.

Q. Where you had your verification on the last page?

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A. Yep.

Q. And if I could direct your attention to Interrogatory No. 10, which is on page 12 of Exhibit 4.

Interrogatory 10 states,
"Identify all instances during the last ten years where either of plaintiffs has been involved as a named party or class representative in a litigation or arbitration in any jurisdiction or before any tribunal or administrative agency and for each such instance: (a) identify the name or caption of such action; (b), identify the court or tribunal in which it was pending; (c), provide a brief description of the nature of the action and the relief sought; and (d), state the outcome of such action or, if still pending, provide a description of the status of such action."

A. Okay.

Q. And then you gave an objection and a response to Interrogatory No. 10, correct?

1 Tauber - Confidential 81

2 A. Yep.

3 Q. And then if you look at your
4 response, it says, "Subject to and without
5 waiving the foregoing objections, Tauber
6 states as follows: Other than the present
7 litigation, Tauber has not, during the last
8 ten years, been involved as a named party
9 or class representative in a litigation or
10 arbitration in any jurisdiction or before
11 any tribunal or administrative agency."

12 That was your answer, correct?

13 A. Correct.

14 Q. That answer is not truthful, is
15 it?

16 A. It is truthful, if truth -- if
17 truth means that one is doing one's best to
18 tell the truth. If it's factual, I would
19 say no, it is not factual.

20 Q. So you'd say it's inaccurate.

21 A. I think that's appropriate.

22 Q. Because your complaint against
23 the State Bar of the State of California
24 was filed February 23, 2006, correct?

25 A. Yes.

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Q. And your verification is dated January 22, 2014, correct?

A. I believe so.

Q. All right. And, so, your suit against the State Bar of California should have been identified when you answered Interrogatory No. 10, correct?

A. That is correct.

Q. Okay. And in your verification, you declare that your answers, under the penalty of perjury, are true and correct, correct?

A. To the best of my knowledge. I mean, there's always the requirement that one be -- be truthful. But this was a minor -- a relatively minor case, and one that occurred eight years prior, and simply did not come to mind.

Q. Okay. At the -- at the time that you submitted the verification --

A. Yeah.

Q. -- were you or were you not aware that you had filed an action against the State Bar of California in 2006?

1 Tauber - Confidential 83

2 A. I was not aware because I did
3 not -- it did not come to mind.

4 Q. If it had come to mind, would you
5 agree with me that it should have been
6 disclosed in your answer --

7 A. Of course.

8 Q. -- to Interrogatory No. 10?
9 Is that right?

10 A. Of course.

11 Q. Are there any other actions or
12 proceedings that should have been disclosed
13 in your response to Interrogatory No. 10,
14 which is Exhibit 4?

15 MR. BROWER: What he recalls now
16 that he didn't recall then?

17 MR. HYLAND: Let the question
18 as --

19 MR. BROWER: Object to the form.

20 MR. HYLAND: -- as stated.

21 MR. BROWER: Go ahead. Answer.

22 A. I actually have -- have given --
23 when I think about it, there was a lawsuit
24 that was filed, I think, about ten years
25 ago. It might have been -- it might have

Tauber - Confidential

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2 been within ten years. I have a summer
3 home on the Russian River, and there's
4 damage to the banks of that river and to my
5 dwelling that had been attributed by
6 experts to the damming of water by the
7 PG&E, which is the electric company in
8 California, and I filed a lawsuit against
9 them. It would have probably been in
10 2004/2005. And that matter was resolved as
11 well.

12 Q. You were the plaintiff in that
13 case?

14 A. That's correct.

15 Q. Where -- in what court was the
16 lawsuit filed?

17 A. Mendocino County.

18 Q. Who was the defendant?

19 A. Pacific Gas and Electric Company.

20 Q. And what was the outcome of that?

21 A. The outcome is a matter of
22 settlement and, I believe, is not open to
23 the public.

24 Q. Did you receive a monetary
25 payment?

1 Tauber - Confidential 85

2 A. The outcome of that is not open
3 to the public, to my knowledge.

4 Q. All right. Was there a
5 settlement agreement?

6 A. There was an agreement.

7 Q. And the settlement agreement had
8 a confidentiality provision?

9 A. I believe it did.

10 Q. And the confidentiality provision
11 stated that it couldn't be disclosed except
12 as required by legal process?

13 A. I'd have to return to the -- to
14 that agreement. I have not looked at it in
15 -- in ten years.

16 Q. Okay.

17 MR. HYLAND: I want it on the
18 record asking that that happen and that
19 we receive a copy of it.

20 MR. BROWER: Well, if the
21 agreement says -- it doesn't say under
22 compulsion by a Court order or
23 something, we'll take it under
24 consideration. If it does, the answer
25 is no.

1 Tauber - Confidential 86

2 MR. HYLAND: Well --

3 MR. BROWER: If it doesn't have

4 the exception --

5 MR. HYLAND: All right.

6 MR. BROWER -- you're suggesting,

7 the answer is no.

8 MR. HYLAND: I would say that

9 whether it does or it doesn't, I think

10 that it would have to be -- have to be

11 produced because of -- it's clearly --

12 clearly an exception to that. But we

13 can talk about that.

14 MR. BROWER: We can talk about

15 that.

16 MR. HYLAND: I'm not going to

17 debate about it now.

18 Exhibit 6.

19 (A document entitled

20 United States Tax Court Docket Entries

21 was marked as Tauber 6 for

22 identification.)

23 Q. Do you recognize Exhibit 6?

24 A. No.

25 Q. This at the top says,

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"United States Tax Court Docket Entries,"
and it says -- on the left, there's a
docket number, and it says, "Jeffrey Tauber
versus Commissioner of Internal Revenue."

Do you see that?

A. I do.

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Q. All right. And how do you know
Mr. Steven Katz?

A. He's my tax attorney.

Q. How long has he been your tax
attorney?

A. Probably 2000 -- perhaps 2008.

Q. All right. And he's still your
tax attorney?

A. He's still my attorney.

Q. Is he a friend?

A. No.

Q. Okay. Do you find him to be
competent?

A. I believe so.

[illegible]

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Q. Okay. Are you currently insolvent?

A. No.

Q. Are you paying debts as they become due?

A. I am at this time.

Q. Do you have credit card debt?

A. No.

Q. Have you had any credit cards canceled?

A. No.

Q. How many credit cards do you have?

A. Three.

Q. And you use all of them?

A. Yes.

Q. Do you have outstanding balances on any of them?

A. No. Well, I mean, within -- within 3 to \$500 or something.

1 Tauber - Confidential 101

2 Q. Okay. Have you -- you identified
3 some properties. I think you identified a
4 vacation property and a Cragmont Avenue
5 property?

6 A. Yeah.

7 Q. All right. Do you still own the
8 Cragmont Avenue property?

9 A. No, I do not.

10 Q. You sold that?

11 A. I did.

12 Q. When did you sell that?

13 A. It would have been in 2008.

14 Q. Okay. When -- when did you
15 purchase that property?

16 A. 2005.

17 Q. And did you make or lose money on
18 the sale?

19 A. I lost money.

20 Q. How much did you buy it for and
21 how much did you -- did you sell it for?

22 A. I purchased it for, I believe,
23 \$750,000, and it was sold through the bank,
24 and I'm not sure what the selling price
25 was. I think it was somewhere in the

1 Tauber - Confidential 102
2 neighborhood of \$600,000.
3 Q. So it was a foreclosure?
4 A. No.
5 Q. You said you sold it through the
6 bank.
7 What does that mean?
8 A. Well, there are different ways
9 that one deals with -- with property sales,
10 and one of them is to -- to sell it to or
11 through your bank. And that is the
12 procedure that -- that I -- I used.
13 Q. Did you sell it to the bank or
14 through the bank?
15 A. You know, I'm not -- I'm not sure
16 what the appropriate nomenclature is. I
17 think there was a buyer, and the bank
18 assumed the property, and it was sold to
19 that buyer through the bank, as I
20 understood it.
21 Q. And at the time of the sale, was
22 there an outstanding mortgage on that
23 property, the Cragmont Avenue property?
24 A. There was.
25 Q. What was the amount of the

1 Tauber - Confidential 103

2 mortgage?

3 A. I'm not sure. I think it

4 probably was somewhere between 450 and

5 \$500,000.

6 Q. So you think you have maybe

7 around 100 or \$150 in equity?

8 A. I have no equity.

9 Q. No equity?

10 A. No equity.

11 Q. Well, if you sold it for 600,000,

12 and your outstanding mortgage was 450 or

13 500, that would have left about 100 left

14 over in equity, right?

15 A. I had no equity.

16 Q. Okay.

17 A. Which means that it -- that I

18 probably owed more than that.

19 Q. Okay. And what about your

20 vacation -- I think you mentioned a

21 vacation property?

22 A. I own a property -- a cabin in

23 the -- on the Russian River.

24 Q. And where is that located?

25 A. That's located on the -- on --

1 Tauber - Confidential 104

2 well, it's -- it's located in Mendocino

3 County. And the address is 8001 Potter

4 Valley Road.

5 Q. Have you ever lived there?

6 A. For -- from time to time, yeah.

7 Q. All right. And when did you

8 acquire that property?

9 A. It was 2002.

10 Q. And you still own that?

11 A. I still do.

12 Q. Is there a mortgage on that

13 property?

14 A. There is.

15 Q. What's the amount of the

16 mortgage?

17 A. There's a first and a second. So

18 it's probably somewhere in the neighborhood

19 of \$230,000.

20 Q. Total, the first and the second?

21 A. Total, yeah.

22 Q. Do you rent that property?

23 A. I do.

24 Q. Are you current on the mortgage

25 payments on that property?

1 Tauber - Confidential 105

2 A. Yeah.

3 Q. Do you own any other personal --
4 real estate?

5 A. No.

6 Q. During -- during the year
7 2007/2008, am I correct that you were
8 getting paid on a per-diem basis as -- as
9 needed?

10 A. Yeah.

11 Q. And you weren't getting a regular
12 salary.

13 A. No.

14 Q. Okay. For 2007 and 2008, can you
15 give a range of how much you made on your
16 per-diem payments for your services as a
17 judge?

18 A. Not really. It was -- it -- it
19 varied pretty -- pretty significantly.
20 Sometimes, some years, it was as little as
21 \$30,000, and some years, it was over
22 \$100,000.

23 Q. Okay. And do you have a
24 recollection back in 2007 and 2008 what the
25 amount was?

1 Tauber - Confidential 106

2 A. I think 2007 was probably in the
3 neighborhood of -- well, I really don't
4 know. It would -- it would -- 50 to 75,000
5 perhaps.

6 Q. Okay. And back in 2007, in your
7 mind, were you relying on your trading to
8 help you make ends meet?

9 A. I never took any money out. I
10 left it all in. And therefore, I lost it
11 all.

12 Q. Do you gamble at all?

13 A. No.

14 Q. Ever go to Vegas?

15 A. Very rarely, and -- and I don't
16 gamble.

17 Q. All right. And how did you learn
18 about this lawsuit?

19 A. My brother-in-law told me about
20 it. He follows -- he follows financial
21 matters. He's a former economist with one
22 of the large banks. And so he, as a
23 pastime -- because he's retired -- he
24 follows the stock market. And in this
25 particular instance, he knew that I had a

1 Tauber - Confidential 107

2 large sum in Sigma and -- and saw the

3 notice and called me and told me about it.

4 Q. Has he served as a class

5 representative before that you're aware of?

6 A. No.

7 Q. Okay. And you said he's your

8 brother-in-law.

9 How is he your brother-in-law?

10 A. He's married to my sister.

11 Q. Okay. And what's his name?

12 A. Michael Raffleson.

13 Q. How do you spell that?

14 A. R-A-F-F-L-E-S-O-N.

15 Q. Okay. And where does he reside?

16 A. It's -- it's -- it's in Long

17 Beach. I don't know the address.

18 Q. Okay. And he's still married to

19 your sister?

20 A. Yeah.

21 Q. And how is he aware that you had

22 invested in Sigma?

23 A. Because we used to talk about

24 investments in general.

25 Q. Did he ever provide you advice?

1 Tauber - Confidential 108

2 A. Not really.

3 Q. Okay. And did he understand that

4 you had lost a lot of money in Sigma at

5 that time?

6 A. At what time, sir?

7 Q. At the time that he told you

8 about this lawsuit.

9 A. Oh, I -- I believe so, yeah.

10 Q. At the time that you learned

11 about this lawsuit, were you still invested

12 in Sigma, or were you out of Sigma?

13 A. I might have had a few thousand

14 dollars in it. I don't think I did, but

15 it -- at most, it would have been probably

16 2 or \$3,000.

17 Q. Okay. And what -- what kinds of

18 trades did you engage in with -- with

19 Sigma?

20 You purchased and sold stock,

21 correct?

22 A. Yeah.

23 Q. Did you utilize options?

24 A. Yep.

25 Q. What kind of options?

1 Tauber - Confidential 109

2 A. What kind are there?

3 Q. I'm asking you.

4 What kind of options are you

5 aware of?

6 A. Well, I can -- I can tell you

7 that they were -- as I understood it, they

8 were options that Sigma stock would go up.

9 And they had a time -- they had a period of

10 time in which Sigma would have to reach a

11 certain level for this -- for the option to

12 -- to pay off.

13 Q. Well, how did the option work,

14 though?

15 A. I don't know if I could explain.

16 Q. What's a call option? You ever

17 hear of a call option?

18 A. You know, I did understand a good

19 deal at the time. It's something that I've

20 kind of put out of my mind.

21 Q. What is a put option?

22 A. I could not tell you. It's

23 something I haven't dealt with in some

24 time.

25 Q. Well, when you traded in options,

1 Tauber - Confidential 110

2 how did you understand those options worked
3 mechanically?

4 MR. BROWER: Asked and answered.

5 Go ahead.

6 Q. What would you -- what were you
7 buying and what were you selling?

8 A. I was basically buying a -- I was
9 buying a -- an agreement that -- that if
10 the stock was at a certain level at the end
11 of the -- the option period, then one would
12 receive the stock where you would have --
13 you would -- you would gain a profit on the
14 -- on the option.

15 Q. How did you learn about options?

16 A. Through reading and through
17 following, you know, various discussions.
18 They came to my attention; I followed them;
19 I saw how other people were doing on Gilder
20 and decided that it was something that I
21 wanted to know more about.

22 Q. Did you buy and sell options?

23 A. I -- my recollection is that I
24 bought options.

25 Q. And, so, if you bought an option,

1 Tauber - Confidential 111
2 what would happen thereafter to the option?
3 What were the -- what -- what were the
4 possible outcomes?
5 A. Well, if the stock reached the
6 level that you had -- that you had applied
7 for, then you would -- the return -- you
8 would -- you would have a return on that
9 option.
10 Q. And what if it didn't?
11 A. Then you would lose whatever
12 monies you put in that option.
13 Q. Could you sell an option?
14 A. I believe you could, yes, sir.
15 Q. Did you ever sell options?
16 A. I don't recall doing that.
17 Q. Did you lose money on these
18 options that you traded in regarding Sigma?
19 A. I did.
20 Q. Have you ever heard the term
21 "short sale"?
22 A. Yeah.
23 Q. What is a short sale?
24 A. I'm trying to remember. I had --
25 I had much more facility than I do right

1 Tauber - Confidential 112

2 now. As I -- as I recall, a short sale

3 is -- is where one has an expectation that

4 the stock will go down.

5 Q. And then what happens?

6 A. Quite frankly, I don't recall.

7 Q. Did you ever engage in short

8 sales?

9 A. I don't believe I did.

10 Q. And when you learned from

11 Mr. Raffleson about the existence of the

12 suit, what did you do?

13 A. I contacted the law firm that was

14 mentioned in the -- in the article.

15 Q. Which law firm was that?

16 A. I believe Mr. -- is it Pivens?

17 Law firm.

18 Q. And what did you do?

19 A. I spoke to Mr. Pivens.

20 Q. And what did he say to you, and

21 what did you say to him?

22 MR. BROWER: Nice try. I direct

23 him not to answer. Move on. I'm

24 directing him not to answer.

25 Attorney-client privilege.

1 Tauber - Confidential 113

2 MR. HYLAND: Well, I'm marking
3 not asking for any legal advice.

4 MR. BROWER: You're asking him
5 what his lawyer said to him and what he
6 said to his lawyer in contemplation of
7 retaining counsel? Nice try. Is that
8 what Mr. Druker does?

9 MR. HYLAND: No. He's not a
10 class representative.

11 MR. BROWER: No, he's not.

12 Q. And you thereafter retained
13 Mr. Piven's firm?

14 A. That's correct.

15 Q. Okay.

16 (A draft of a class action
17 complaint was marked as Tauber 7 for
18 identification.)

19 Q. Do you recognize Exhibit 7?

20 (Pause)

21 A. Not specifically, no. I remember
22 signing an agreement, but I couldn't -- I
23 couldn't swear that this is the agreement.

24 Q. Is it -- it's addressed to "Dear
25 shareholder," right? It doesn't --

1 Tauber - Confidential 114

2 A. Yeah, correct.

3 Q. It doesn't contain your name.

4 A. That's correct.

5 Q. At the bottom, it says, "Tauber
6 504."

7 Does that indicate that you
8 produced this document?

9 A. Personally?

10 Q. At the bottom, there's a --

11 A. I know. I know what you're
12 saying.

13 Q. Yes.

14 A. I just --

15 Q. Yes.

16 A. Is the question did I produce
17 this document?

18 Q. Yes.

19 A. And by "produce," you mean did
20 I -- did I draw it up?

21 Q. No.

22 MR. BROWER: No.

23 Q. Did you produce this document in
24 the litigation? Did this come from your
25 files, and did you produce it?

1 Tauber - Confidential 115

2 A. I have no files.

3 Q. Okay. So you don't know one way
4 or the other whether you produced this
5 document?

6 A. I assume that it -- that it's my
7 document, but I couldn't -- I couldn't
8 swear to it.

9 Q. All right.

10 MR. BROWER: For the record, we
11 produced the document. Is there
12 some --

13 MR. HYLAND: I understand that.

14 MR. BROWER: -- issue? Okay.

15 MR. HYLAND: Yeah. There's an
16 issue. You produced it, but I don't
17 know if Mr. Tauber produced it to you.
18 That's why I asked the question.

19 MR. BROWER: Okay.

20 MR. HYLAND: Exhibit 8.

21 (A document entitled Plaintiff's
22 Certification was marked as Tauber 8
23 for identification.)

24 Q. Do you recognize Exhibit 8, which
25 is entitled "Plaintiff's Certification"?

1 Tauber - Confidential 116

2 A. May I read it?

3 (Pause)

4 A. Yes, I believe this is a document

5 that I signed.

6 Q. And who prepared this document?

7 A. Are you referring to both sides

8 of this document?

9 Q. Let's stick with the first page,

10 which is plaintiff's certification.

11 It says, "Jeffrey Tauber declares

12 that," right?

13 A. That was created, or, rather, a

14 draft was provided to me and discussed, and

15 I signed it.

16 Q. Was a draft provided to you?

17 A. Yeah.

18 Q. And did you have any changes to

19 it?

20 A. I don't recall.

21 MR. BROWER: We're still on the

22 first page, right?

23 MR. HYLAND: Yes.

24 MR. BROWER: Okay.

25 Q. And that's your signature at the

1 Tauber - Confidential 117

2 bottom?

3 A. That's correct.

4 Q. That's dated March 2, 2012?

5 A. That's correct.

6 Q. Okay. Now, if you go back to

7 Exhibit 7 for a moment.

8 A. Yes.

9 Q. In the second paragraph, the

10 paragraph that starts with the word "Also,"

11 do you see that?

12 A. Yeah.

13 Q. If you could just read that to

14 yourself. This asks you to provide

15 information concerning your trading,

16 correct, in Sigma?

17 A. That's correct.

18 Q. Okay. And about halfway down, it

19 asks that you identify the trade date for

20 each transaction during the class period,

21 correct?

22 A. Correct.

23 Q. And the word "trade" is all in

24 capital letters, correct?

25 A. Correct.

1 Tauber - Confidential 118

2 Q. And did you undertake and perform
3 that exercise to assemble all of your
4 trading information concerning Sigma --

5 A. I --

6 Q. -- during the class period?

7 A. When -- when that request was
8 made, I contacted Fidelity --

9 Q. Yes.

10 A. -- and asked them for that
11 information. They sent me a -- quite a
12 voluminous package. I'm trying to remember
13 now. It probably was at least two to three
14 inches thick. And I reviewed the
15 information, and I provided that
16 information to Mr. Pivens.

17 Q. When you say you provided that
18 information, you -- you sent the documents
19 that Fidelity sent to you on to Mr. Piven?

20 A. Well, I reviewed them first
21 because they wanted me to -- to note
22 whether or not --

23 MR. BROWER: Be careful not to
24 disclose conversations between you and
25 your counsel.

1 Tauber - Confidential 119

2 THE WITNESS: Okay.

3 A. I did review them, and I then --
4 I then provided them to my attorney.

5 Q. All right. If you turn it over
6 where it says "Attachment to
7 certification."

8 A. Yeah.

9 Q. And this document on the left
10 says, "Name: Jeffrey Tauber," and then it
11 has a number of columns, starting with
12 number of shares, and then followed by
13 purchased/sold, and then trade date, price
14 per share, number of shares.

15 A. Right.

16 Q. Purchase, sale, trade date,
17 right, and price per share?

18 A. Mm-hmm.

19 Q. Yes?

20 A. Yeah, I see it.

21 Q. And who populated this chart?

22 A. The chart was -- as I understood
23 it, reflected the information that was
24 delivered to me by Fidelity. And the chart
25 itself was not drawn up by me.

1 Tauber - Confidential 120

2 Q. Who drew it up? Who prepared the
3 chart?

4 A. Well, I prepared it with my
5 attorney, through discussions with my
6 attorney.

7 Q. And were those telephone
8 discussions or in-person discussions?

9 A. Those were telephone discussions.

10 Q. All right. And while you were
11 having those discussions, did you have a
12 copy of all of the pertinent Fidelity
13 information and your attorneys have a copy
14 of all of that information?

15 A. My recollection is that my
16 attorneys had that information, and I had
17 that information as well.

18 Q. All right. And did you go over
19 it line by line with your counsel?

20 A. That I cannot say. I -- I -- my
21 recollection is -- is that I relied on the
22 information and on the consultations to
23 come up with the -- with the numbers.

24 Q. When you discussed this chart
25 with counsel, was it already completed and

1 Tauber - Confidential 121

2 then you discussed it, or was it blank and
3 you were discussing with your counsel how
4 it should be completed?

5 A. My recollection is that there
6 were discussions about specific dates and
7 numbers, and -- and I provided information
8 or -- or attempted to provide information.

9 Q. All right. But the information
10 that you attempted to provide already had
11 been provided to your counsel at the time,
12 correct --

13 A. Yeah.

14 Q. -- in the form of the documents
15 sent to you by Fidelity, right?

16 A. Mm-hmm.

17 Q. Okay. And who -- who physically
18 prepared the chart?

19 A. I did not.

20 Q. Do you know who did?

21 A. It ultimately was provided to me
22 for review by my attorneys.

23 Q. Are you aware of which of your
24 attorneys or their employees prepared the
25 chart?

1 Tauber - Confidential 122

2 A. I do not have that information.

3 Q. And who did you discuss the chart
4 with?

5 A. I believe that I spoke to
6 Mr. Pivens about the chart.

7 Q. Anyone else?

8 A. Not at that time. I -- it
9 depends what we're -- when we're talking.
10 This is -- this would be March 2, 2012.
11 And -- so I may have also discussed this
12 with Mr. Kerr. I'm not sure that that
13 occurred.

14 Q. Okay. Is the chart accurate?

15 A. I cannot -- I cannot certify that
16 Fidelity is correct in all matters. These
17 are numbers that were provided to me, and I
18 relied on the accuracy of Fidelity's
19 accounting and -- and their presentation of
20 -- of information.

21 Q. To your knowledge, is any of the
22 information on the chart on Exhibit A
23 inaccurate?

24 A. Well, the only thing I -- I -- I
25 understand may be inaccurate is the trade

1 Tauber - Confidential 123

2 dates. As I understand it, there was some
3 confusion, certainly on my part. As you no
4 doubt noted, I am not an experienced
5 trader. And I wasn't even certain what the
6 significance of a trade date is opposed to
7 a settlement date.

8 Q. Okay. But you had -- as of this
9 time in March of 2012, you had been
10 personally trading in securities for about
11 eight years, correct?

12 A. No, no. I probably started in
13 2005 trading individual stocks, maybe
14 2000 -- late -- I don't know when in 2005.
15 And this was 2012. So it would have been
16 something like six, perhaps seven years.

17 Q. All right. And during that time,
18 you had engaged in perhaps thousands of
19 transactions, correct?

20 MR. BROWER: Objection.

21 A. I couldn't tell you whether there
22 were a thousand transactions.

23 Q. Well, in Sigma alone, you had
24 hundreds of transactions, correct?

25 A. Probably.

1 Tauber - Confidential 124

2 Q. All right. And that each time
3 you entered --

4 A. You know, if I may answer that
5 question slightly differently. I noted,
6 when I was looking at the -- at the
7 complaint, that when I would make a
8 purchase of stock, and a large purchase --
9 could be 5, 10,000 shares -- that would be
10 broken down sometimes into 20 sales.

11 Q. Okay.

12 A. So if we're talking about
13 hundreds of sales, I don't know that there
14 were hundreds of sales. I know that --
15 that there were certainly dozens, if not --
16 and -- and I wouldn't -- I would guess at
17 least close to 100 maybe -- and maybe
18 substantially more. But a lot of those
19 sales were -- were multiple parts of a
20 single sale.

21 Q. All right.

22 A. Okay?

23 Q. And -- and when you say "multiple
24 parts," am I correct that you might decide,
25 for example -- take a hypothetical -- to

1 Tauber - Confidential 125
2 sell -- to purchase a thousand shares --
3 A. Right.
4 Q. -- but you decide to do it in
5 increments?
6 A. No.
7 Q. No?
8 A. No. Sigma is not a large enough
9 company necessarily to -- for -- for
10 Fidelity to -- to -- as I understand it,
11 which is very limited -- to -- to sell
12 5,000 shares just like that.
13 Q. Right.
14 A. So they will break it down into
15 sometimes 15, 20 --
16 Q. Okay.
17 A. -- 30 separate sales. And -- but
18 I've only made one purchase.
19 Q. And -- and when Fidelity did
20 that, in implementing your instructions,
21 you would get confirmations from Fidelity.
22 A. Yeah.
23 Q. Correct?
24 A. Yeah.
25 Q. And those -- and you received

1 Tauber - Confidential 126

2 hundreds of those, correct?

3 A. Yeah, yeah.

4 Q. And those confirmations identify
5 trade date, correct?

6 A. I don't recall.

7 Q. All right.

8 MR. BROWER: Is it time for
9 another break?

10 MR. HYLAND: Sure. Yeah. We
11 could do that.

12 THE VIDEOGRAPHER: Stand by,
13 please. The time is 12:30. We are now
14 off the record. This is the end of
15 Tape No. 2.

16 (Luncheon recess: 12:30 p.m.)

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1 Tauber - Confidential 127
2 AFTERNOON SESSION
3 1:40 p.m.
4 THE VIDEOGRAPHER: Stand by,
5 please.
6 The time is 1:40 p.m. This is
7 the beginning of Tape No. 3. We are
8 back on the record.
9 EXAMINATION CONTINUED
10 BY MR. HYLAND:
11 Q. Good afternoon, Mr. Tauber.
12 A. Good afternoon.
13 Q. I'm going to show you the next
14 exhibit, which will be Exhibit 9.
15 (Trading records were marked as
16 Tauber 9 for identification.)
17 Q. I'm going to ask you if you can
18 identify Exhibit 9 as trading records
19 reflecting your trades in Sigma.
20 A. That's what it appears to be,
21 yes, sir.
22 Q. Okay. And were these -- and
23 these records were sent to you by Fidelity?
24 A. I received envelopes regularly
25 from Fidelity, and I assume that they're

1 Tauber - Confidential 128

2 all -- they -- they were all received, yes,

3 sir.

4 Q. Okay. And were these records

5 shown in Exhibit 9 -- were they used to

6 assist in the compilation of the trading

7 chart that appears as part of Exhibit 8?

8 A. I don't believe it was -- I'm not

9 certain. But I don't believe it was -- it

10 was these documents.

11 Q. Okay. All right.

12 But when Exhibit 8 was prepared,

13 though, you did testify that there were

14 trading records that had been provided by

15 Fidelity that led you or your attorneys to

16 be able to complete the schedule.

17 A. Yes. Let me just say this. They

18 no longer had the records online is my

19 recollection. And, so, they -- they sent

20 me records that were -- that were different

21 than -- my recollection is that they were

22 set up in a -- in a different fashion than

23 this.

24 Q. Okay. All right, fine.

25 And just taking a look at the

1 Tauber - Confidential 129
2 first page up top, it identifies brokerage
3 account and number, which is blacked out.
4 And then it says your name, Jeffrey Tauber.
5 A. Right.
6 Q. This represents, then, your
7 individual account at Fidelity?
8 A. I believe so.
9 Q. All right. And did anybody else
10 have an interest at any time in that
11 account?
12 A. No.
13 Q. All right. And then if you go,
14 just, for example, to page 548.
15 A. 548.
16 MR. BROWER: Using the bottom
17 number.
18 THE WITNESS: Okay.
19 A. Yes, sir.
20 Q. Up top it, says, "Brokerage
21 account number," and it says, "IRA
22 rollover, Jeffrey Tauber."
23 A. Right.
24 Q. You see that, right?
25 A. Yes.

1 Tauber - Confidential 130

2 Q. And that's a separate account
3 from your individual account, right?

4 A. That's correct.

5 Q. Okay. And did anyone else ever
6 have any ownership or beneficial interest
7 in that account?

8 A. No, sir.

9 Q. Okay. And it says "IRA
10 rollover."

11 What was it a rollover from? Do
12 you remember?

13 A. The only thing I can think of is
14 that I -- I had a -- I had a retirement
15 plan with the organization that I headed,
16 National Association of Drug Court
17 Professionals, and I no doubt had a pension
18 or an IRA, and that might be the case that
19 it might be from that -- from that -- from
20 that purpose.

21 Q. Is that your best recollection
22 that that was rolled into this IRA?

23 A. I wouldn't want to say that. I
24 would want to say that -- that that's what
25 I can think it likely to be.

1 Tauber - Confidential 131

2 Q. And do you know when the IRA
3 rollover account was formed?

4 A. All three accounts were formed at
5 the same time.

6 Q. All right.

7 A. Same day.

8 Q. So your IRA rollover, am I
9 correct, came -- came directly from some
10 other employer-sponsored plan directly into
11 the Fidelity?

12 A. I had -- I had -- I had a -- I
13 had a -- an account with Edwards and
14 Company.

15 Q. AG Edwards?

16 A. AG Edwards. And it was -- and I
17 believe I had both the IRA and the -- and
18 the 401k. I believe they were both with
19 them. And it was a very -- I knew -- I
20 knew the people, and -- and they handled
21 for several years prior to Fidelity. So, I
22 mean, I did have -- I did have a
23 representative who was handling my -- my
24 monies rather than myself prior to that
25 date.

1 Tauber - Confidential 132

2 Q. Prior to transferring the money
3 into Fidelity?

4 A. Exactly.

5 Q. So at Edwards, you had a
6 professional that was assisting you?

7 A. Yeah.

8 Q. Did that professional make any
9 investment decisions for you?

10 A. Yeah.

11 Q. So that was what you would
12 call -- do you understand that that was a
13 discretionary account?

14 A. I believe so. Yeah.

15 Q. So you decided -- so Edwards was
16 trading -- so a representative from Edwards
17 was trading your money, both your
18 retirement accounts and your personal
19 account?

20 A. I'm not sure about the personal
21 account.

22 Q. Okay.

23 A. I may have had -- just had that
24 in the bank. I -- I really don't recall.

25 Q. Okay.

1 Tauber - Confidential 133

2 A. Yeah.

3 Q. And, so, AG Edwards would make

4 the trading decisions for you.

5 A. Prior to Fidelity, yeah.

6 Q. Right. And, so, they wouldn't

7 even check with you; they would just make

8 the trades, and then you would see what was

9 happening?

10 A. Well, I mean, I consulted with

11 them on a regular basis.

12 Q. Right. But they had the

13 authority to actually make a decision to

14 buy or sell a security?

15 A. Yeah.

16 Q. Yes?

17 A. Yeah.

18 Q. Okay. And then you changed that

19 relationship and moved the accounts over to

20 Fidelity?

21 A. Yep.

22 Q. Where only you would be the one

23 making the trading decisions, correct?

24 A. Correct, sir.

25 Q. Why did you do it that way?

1 Tauber - Confidential 134

2 A. Well, I thought that I was a
3 capable person. I thought that I wanted
4 more personal accountability for the
5 decisions that were being made. And I
6 thought that I could, once again,
7 competently represent myself in that
8 regard.

9 Q. You thought you could get better
10 results doing it yourself than doing it
11 with AG Edwards.

12 A. It's another way of saying it.

13 Q. Okay. And then I'll just get you
14 to identify the third account, if you -- if
15 you just move over to page 552. I'm just
16 directing your attention to the title of
17 the account.

18 A. Yeah.

19 MR. BROWER: Are you sure -- oh,
20 552. I'm sorry.

21 MR. HYLAND: Yeah.

22 A. Okay.

23 Q. And up there, it says, "IRA
24 simplified employee pension plan," right?

25 A. Right.

1 Tauber - Confidential 135

2 Q. So that's the third account?

3 A. That's the third account.

4 Q. And what did this account derive
5 from?

6 A. Well, that's a good question. I
7 -- quite frankly, I'm not sure if this
8 related to National Association of Drug
9 Court Professionals or to a prior -- I -- I
10 previously had a -- an IRA, or maybe it was
11 a 401k, and -- and I had it for many, many
12 years. And I think that that would have
13 been -- just trying to -- I'm only trying
14 to make some sense of this because it's
15 something that I haven't really thought of
16 in a long time.

17 I think the 401k is something I
18 probably had for 20 or 30 years, and it was
19 just something that would build and build.
20 It -- it was with a -- a major company such
21 as fiduciary -- Fidelity, but it wasn't
22 Fidelity. And -- and I think the other
23 one, I think -- I think the IRA pension
24 probably was from NAD -- NADCP, National
25 Association of Drug Court Professionals.

1 Tauber - Confidential 136

2 Q. Okay. The 401k, though, was that
3 an employer-sponsored plan, and if so, who
4 was the employer?

5 A. It probably was before I became
6 the judge. So I had a number of employers.
7 I was a public defender. I was a private
8 attorney. So there were a number of
9 opportunities to put money in.

10 Q. All right. When you were a
11 private attorney, it was your firm, right?

12 A. Yeah.

13 Q. And do you remember having a 401k
14 plan?

15 A. Yeah.

16 Q. Okay. All right.

17 And apart from the -- the two
18 IRAs identified in these documents, that
19 is, your rollover IRA -- that's what it's
20 called -- and the simplified employee
21 pension plan IRA, did you ever have any
22 other IRAs?

23 A. No.

24 Q. Okay.

25 MR. BROWER: Other than what he's

1 Tauber - Confidential 137

2 already testified to.

3 MR. HYLAND: Well --

4 MR. BROWER: He already testified

5 he had an IRA years before that was

6 with a mutual fund company like

7 Fidelity, but not Fidelity. He

8 testified he had this 401k plan from

9 some prior employer. Your question had

10 the word "ever" in it --

11 MR. HYLAND: Yeah.

12 MR. BROWER: -- other than these

13 two, and that would be misleading

14 because he's already testified that's

15 not correct.

16 MR. HYLAND: Well, I'm not sure.

17 Okay. We'll straighten that out.

18 A. Okay.

19 Q. So you've got the simplified

20 employee pension plan IRA, right?

21 A. Right.

22 Q. Am I correct that you think that

23 that is a rollover of sorts from a prior

24 401k?

25 A. I understood -- I understood that

1 Tauber - Confidential 138
2 one was an IRA, and one was a 401k.
3 Q. Okay.
4 MR. HYLAND: Mr. Brower --
5 A. And -- And maybe --
6 MR. HYLAND: Mr. Brower --
7 A. -- other language --
8 MR. HYLAND: -- you're been
9 giving some certain body signals
10 to him, I think.
11 MR. BROWER: That's bullshit.
12 MR. HYLAND: Perhaps -- perhaps
13 inadvertent --
14 MR. BROWER: That's not true.
15 MR. HYLAND: Perhaps
16 inadvertently.
17 MR. BROWER: That's not true.
18 MR. HYLAND: Perhaps
19 inadvertently. No --
20 MR. BROWER: And you're smirking
21 half the day.
22 MR. HYLAND: No, I'm not.
23 MR. BROWER: So I'm happy to have
24 him get two more cameras.
25 MR. HYLAND: Okay.

1 Tauber - Confidential 139

2 MR. BROWER: And we could do a
3 three-way.

4 MR. HYLAND: We might -- we may
5 do that, okay?

6 MR. BROWER: Okay. Then why
7 don't we do that.

8 MR. HYLAND: We may do that, but
9 not right now. But -- but, you have
10 and I've got --

11 MR. BROWER: It's not true, and
12 I'm not going to listen to it.

13 MR. HYLAND: Okay. All right.
14 Fine. I'm just stating it for the
15 record.

16 MR. BROWER: And half the day
17 I've been spending looking in the other
18 direction away from the witness.

19 MR. HYLAND: Okay.

20 MR. BROWER: So why don't you put
21 that on the record.

22 MR. HYLAND: You've been
23 shrugging and nodding your head up and
24 -- nodding your head and shaking your
25 head and shrugging your shoulders.

1 Tauber - Confidential 140

2 MR. BROWER: That's just my
3 reaction to --

4 MR. HYLAND: After --

5 MR. BROWER: -- your question,
6 not the answer.

7 MR. HYLAND: After there's a
8 question and before an answer, okay?
9 All right.

10 A. Can I just add this much? I've
11 been staring at you virtually --

12 Q. Okay.

13 A. -- the entire time.

14 Q. Thank you.

15 Okay. Other than the IRA
16 simplified employee pension plan --

17 A. Right.

18 Q. -- and the rollover IRA --

19 A. Right.

20 Q. -- okay, are you aware of any
21 other retirement plans or IRAs separate and
22 apart from those two?

23 A. Not at the time that I started
24 my -- my plan with Fidelity.

25 Q. Okay.

1 Tauber - Confidential 141

2 A. And quite frankly, I don't -- I
3 don't know of any that I can think of. I
4 mean, it's conceivable that I had other
5 plans earlier in my career, but it's just
6 not --

7 Q. That's fine.

8 A. -- not coming to mind.

9 Q. Thank you.

10 All right. And if you go back to
11 Exhibit 8, I'm looking at the chart here
12 that shows a summary of your purchases and
13 sales of Sigma during the class periods,
14 correct?

15 A. No. 8?

16 Q. Certain of them, yes.

17 MR. BROWER: Stay in front of it.

18 A. All right.

19 Q. The chart on the back.

20 Now, when you list these
21 securities, am I correct -- and identify
22 these transactions -- am I correct that all
23 of these transactions consist of
24 transactions in your individual account,
25 your rollover IRA account, and your

1 Tauber - Confidential 142
2 simplified employee pension plan account?
3 A. I couldn't tell you that at this
4 time.
5 Q. All right. Well, what -- what
6 did you intend to capture when you were
7 summarizing your trading?
8 A. My understanding was that there
9 was -- there was data that was relevant to
10 the lawsuit, and I was made privy to that
11 data and reviewed it with counsel. And it
12 appeared to me to be -- to be accurate, and
13 I so certified.
14 Q. Okay. And just going back to
15 Exhibit 9, okay? I see that -- that which
16 is your trading records.
17 A. Okay.
18 Q. I see they start in January 2006.
19 A. Okay.
20 Q. Okay? But I'm going to direct
21 you forward in the document on -- to July
22 of 2007.
23 A. Okay.
24 Q. And in particular, if we can go
25 to -- start on page 609.

1 Tauber - Confidential 143

2 A. Okay.

3 Q. And if you flip through the
4 subsequent pages --

5 MR. BROWER: I'm sorry,
6 Mr. Hyland, what's the page again?

7 THE WITNESS: 609.

8 MR. HYLAND: 609, Tauber 609.

9 MR. BROWER: Thank you.

10 Q. And if you -- if you -- if you
11 flip through from 609, and we -- if we go
12 to 610 --

13 A. Okay.

14 Q. -- just for example, we see a
15 purchase of, it appears, Sigma call --
16 calls.

17 Do you see that?

18 A. Mm-hmm.

19 Q. Yes?

20 A. Yeah.

21 Q. And that's in your simplified
22 employee pension plan?

23 A. Okay.

24 Q. And if you go, like, to the -- to
25 the next page --

1 Tauber - Confidential 144

2 A. Okay.

3 Q. -- do you see there there's a --

4 which is 611?

5 A. Right.

6 Q. There -- that reflects purchases

7 in your individual account?

8 A. Okay.

9 Q. Okay. And was it your intention

10 to make part of this lawsuit your purchases

11 in all three accounts?

12 A. Yeah.

13 Q. Yes, right?

14 Okay. And in your chart, though,

15 you didn't designate which account,

16 purchased or sold, which Sigma security --

17 Sigma security, correct?

18 A. I'm going to go back to it. Does

19 not appear to be so designated.

20 Q. Okay. Now, the first trade

21 that's identified on your trading -- on

22 your chart --

23 A. You're talking about page --

24 MR. BROWER: Back -- to the back

25 of 8.

1 Tauber - Confidential 145

2 Q. To the back of 8.

3 A. Back of page 8?

4 Q. No, Exhibit 8.

5 A. Exhibit 8, okay.

6 Q. Yeah, the chart there.

7 A. Thank you.

8 Q. For example, that shows an

9 initial purchase of -- of -- during the

10 class period of 9,000 shares of Sigma,

11 correct?

12 A. That's correct.

13 Q. All right. And is it your

14 understanding that the trade date that's

15 listed there, that's not correct?

16 A. That's my understanding at this

17 time.

18 Q. Okay. And that it's your

19 understanding at this time that the dates

20 identified under the columns trade dates

21 are not accurate?

22 A. That's -- that's the information

23 I've been given, yeah.

24 Q. Okay. Did you ever engage in any

25 trading after hours?

1 Tauber - Confidential 146

2 A. You know, I think I did from time
3 to time, but it wasn't something I did
4 regularly.

5 Q. And is it something that you did
6 back in the summer of 2007?

7 A. I couldn't tell you.

8 Q. Okay. All right.

9 So your initial purchase of 9,000
10 shares --

11 A. Okay.

12 Q. -- there --

13 MR. BROWER: Listed on Exhibit 8.

14 MR. HYLAND: I'm sorry?

15 MR. BROWER: Listed on Exhibit 8.

16 MR. HYLAND: On Exhibit 8, yes.

17 MR. BROWER: I think he answered
18 before. You said "there."

19 MR. HYLAND: Yeah, yeah.

20 Q. -- that was a purchase. And then
21 on July 30th, we see a -- a large sale,
22 right? We see a sale of about 9,000 -- the
23 same 9,000 shares, correct?

24 A. I see 9,000 and 8,000.

25 Q. Right. But if you take a look

1 Tauber - Confidential 147

2 over on the right --

3 A. Oh, I see it. Then there's --

4 there were smaller sales within that one.

5 Yeah. Yeah. So it was the same 9,000,

6 yeah.

7 Q. And so you purchased 9,000

8 shares. And it says 719, but that might be

9 the settlement date, right, instead of the

10 trade date?

11 A. That is probably the settlement

12 date, yes, sir.

13 Q. Okay. And then you -- then you

14 sold 9,000 shares about ten days later or

15 so, right?

16 A. Ten days later or so, yeah,

17 absolutely.

18 Q. Why did you do that?

19 A. I can tell you what -- what I was

20 doing at the time. At the time, I was -- I

21 was beginning to learn more about Sigma

22 from -- from all the -- the sources that

23 I've described. I had reason to believe

24 that it -- I knew that it had climbed quite

25 extraordinarily from approximately \$8 a

1 Tauber - Confidential 148

2 share, when I think I first was introduced
3 to it, and I was buying larger shares --
4 numbers of shares of Sigma. And
5 occasionally, I would also sell large
6 numbers of shares of Sigma. I'm not sure
7 if it was, in fact, the best strategy, but
8 it was a strategy that I was employing.

9 Q. So was it your intention to be
10 more or less a short-term trader during
11 this period?

12 A. No. I never thought of myself as
13 a short-term trader.

14 Q. All right. Because I'm just
15 trying to get at your -- your -- if you
16 could possibly articulate for me the reason
17 you would buy 9,000 shares of Sigma, and
18 then 11 days later, sell 9,000 shares.

19 A. Right, and -- and at a lesser
20 price. So the answer to that is I cannot
21 place these sales in any context except to
22 suggest that I was doing my best to manage
23 my account, and that was part of that
24 process.

25 Q. Were you relying on any

1 Tauber - Confidential 149

2 investor -- any -- any type of analyst
3 reports at this time?

4 A. You know, I -- I would do the
5 things that I understood were appropriate.
6 I would listen in to the conference calls,
7 I would read everything that was written, I
8 would go to -- Fidelity had various
9 companies that were analyzed in-house, and
10 some of them out of house. And I would
11 review all the information I had and -- and
12 make decisions based on that.

13 Q. All right. And I see -- if you
14 take a look on August 16th --

15 A. Yeah.

16 Q. -- it appears that, in the same
17 day, you purchased 18,000 shares and sold
18 18,000 shares?

19 A. Apparently, I lost. I -- I
20 really don't have any -- any explanation
21 except that it wasn't a very good day. I
22 think -- I think it's also appropriate to
23 say that these are -- these are -- these
24 sales are, you know, two, three weeks
25 apart.

1 Tauber - Confidential 150

2 Q. No. I'm talking about the -- on
3 August 16th.

4 A. I understand. I understand.

5 Q. You bought 18,000 shares and sold
6 18,000 shares in the same day.

7 A. Yeah, yeah.

8 Q. And that would have meant that
9 when you bought the shares, you were laying
10 out, you know, approximately close to
11 \$600,000, correct?

12 A. Mm-hmm. Mm-hmm.

13 Q. Yes?

14 A. I -- I'll -- I'll accept your
15 math.

16 Q. What percentage of your overall
17 Fidelity account did that --

18 A. -- reflect?

19 Q. -- reflect?

20 A. I don't know. I know that --
21 that I had great expectations for -- for --
22 for Sigma, and that I was investing large
23 amounts in Sigma. And I had the impression
24 that I was making the right choice or the
25 right decisions.

1 Tauber - Confidential 151

2 Q. But as you sit here today, can
3 you have -- do you have any explanation why
4 you would spend almost \$600,000 on Sigma
5 stock and then sell it the same day?

6 A. At a -- at a lesser price?
7 Without -- without being able to go back in
8 time, I can't answer that.

9 Q. Did you have any sort of a file
10 on your Sigma transactions?

11 A. I did, yeah, of course.

12 Q. Did you have any research that
13 was in there?

14 A. I did.

15 Q. And did you produce that in this
16 case?

17 A. That's been gone for five years
18 or more.

19 Q. Okay. Had you ever purchased
20 stock for anything around this amount of
21 money and sold it in the same day before?

22 A. Not that I can think of.

23 Q. And, I mean, during this time --
24 I'm talking about while these trades were
25 being made -- I'm talking about July/August

1 Tauber - Confidential 152

2 2007 -- were you taking any medication at
3 all that could have affected -- could have
4 affected your judgment?

5 A. No, no.

6 Q. Okay. And am I correct that you
7 never added up your purchases and sales for
8 the three class periods to see whether you
9 made or lost money on Sigma?

10 A. Oh, at the time, I'm sure I did.

11 Q. But in connection with this suit,
12 you haven't done that?

13 A. If I did it, I did it at the very
14 beginning. I don't -- I don't recall what
15 I determined. I mean, it was clear to me
16 that I was -- I was, at the time, making
17 money in the sense that -- I mean, I didn't
18 see any of the money. I never saw any of
19 the money. But the stock had risen
20 substantially since my initial purchases.

21 Q. And would you be surprised to
22 learn that you -- that you made money
23 during the class periods by trading Sigma?

24 A. No, I wouldn't be surprised.

25 Q. Okay. With respect to the first

1 Tauber - Confidential 153

2 class period, which, I think, is July 13th
3 to sometime in August --

4 A. Okay.

5 Q. -- how do you claim you were
6 damaged, if at all?

7 A. I feel that if I had accurate
8 information that was available to everyone,
9 that I would have made better decisions.
10 If I knew that the price was being affected
11 in some way by insider trading, I would
12 have not put the money that I did into the
13 stock. I feel like -- I feel like I was
14 literally abused. I feel like this class
15 has been abused by your client.

16 Q. How?

17 A. They have -- as I understand
18 it -- I haven't talked to anybody who's --
19 who's a participant. But there was a
20 scheme to provide information to an
21 outsider, who then bought stocks that drove
22 the price up and then drove it down. And I
23 felt that this was a legitimate market in
24 this particular stock.

25 And as it turns out, to some

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1 extent, it was being driven or manipulated
2 by persons who presented me with a
3 inappropriate, inaccurate, and un-factual
4 description of the stock. And I think that
5 that is not only wrong, but I think that it
6 created an impression that was -- was
7 probably not warranted for -- for that
8 whole class of -- of purchasers.

9
10 Q. Who gave you an inaccurate
11 description of the -- of the stock?

12 A. I'm describing what I noted when
13 I looked at the stock and -- and its
14 movements. And as I understand it, there
15 was an enormous amount of money --
16 millions, tens of millions of dollars, if
17 I'm not mistaken -- that were pumped into
18 the stock and then pulled out of the stock
19 that, in fact, changed -- excuse me --
20 that, in fact, changed the perception of
21 that stock by the honest -- by the small
22 stockholder.

23 And perhaps I wasn't a small
24 stockholder, but I certainly was a diligent
25 one, and I think I -- I did my best to

1 Tauber - Confidential 155

2 understand what the facts were. And I
3 wasn't -- I didn't have real facts. I had
4 facts that were, at least, to some extent,
5 manipulated unfairly and illegally.

6 Q. Who manipulated the facts?

7 A. As I understand it, there was an
8 insider who provided information to Sonar,
9 the Sonar company. And there was a
10 gentleman by the name of Freeman who
11 received that information and made it
12 available to a Mr. Druker. And the two of
13 them distributed that money among a series
14 and a number of investment firms. And in
15 so doing, tens of millions of dollars were
16 siphoned off ultimately from this stock.

17 Q. So is it your contention that
18 Sonar is buying the stock, somehow
19 improperly pushed the stock higher? Is
20 that what you testified to?

21 A. I don't know that it pushed it
22 higher, but it presented an inaccurate,
23 unfair picture to the stockholders.

24 Q. But how -- how did that hurt --
25 how did that hurt you, Mr. Tauber?

1 Tauber - Confidential 156

2 A. Okay. Well, let me tell you how.

3 Q. During the selling period, right?

4 How did that hurt you?

5 A. During the selling period or
6 during the buying period?

7 Q. Selling period.

8 How were you hurt?

9 A. All right. During the selling
10 period, the -- the Sonar company was
11 supporting the price, and perhaps even
12 pushing it up, creating an inappropriate
13 and an unfair and an illegal impression of
14 the strength of the stock. And persons
15 like myself, who believed that this was an
16 important stock, that this was a stock with
17 great opportunity, and -- and -- and the
18 ability to move up very substantially, was
19 a part of creating that impression. In a
20 sense, it created a -- a feeling or an
21 understanding of great enthusiasm.

22 Watching the stock go from -- I
23 don't know -- from -- when I got into it,
24 perhaps it was at 15 to 20. But to go up
25 to -- to \$70 a share, and to know that

1 Tauber - Confidential 157

2 someone has that information prior to me,
3 and then once it reaches that height,
4 pulling out, pulling their money out while
5 I still am under the impression that the
6 stock is strong while they know it isn't,
7 is -- is irreparable harm. It's harmed my
8 life, it's harmed my family, it's harmed me
9 in the most extraordinary and substantial
10 ways. And that's all I've got to say.

11 Q. Well, if you take a look at the
12 period on your chart here from the first
13 date, September 19th, and if you go up to
14 August 16th.

15 A. September --

16 MR. BROWER: You mean July 19th?

17 Q. July 19th.

18 A. July 19th.

19 Q. I'm looking at your trades.

20 A. Yeah.

21 Q. Through August 16th, right?

22 A. Right.

23 Q. Those are your transactions --

24 A. Yeah.

25 Q. -- during a seller class period,

1 Tauber - Confidential 158

2 right?

3 A. Right.

4 Q. Okay. And if -- if -- so you are

5 representing people who sold during that

6 period, correct?

7 A. Okay.

8 Q. Are you? Is that true?

9 A. I believe so.

10 Q. Okay. And if Sonar was buying,

11 and it was pushing the price of the stock

12 up, that would mean that you would be

13 selling at a higher price than you

14 otherwise would, right?

15 A. That's only part of the picture.

16 Yeah. You're right.

17 Q. Right? Correct?

18 A. Yeah.

19 Q. Okay. Okay.

20 So let's just assume that Sonar

21 didn't trade during its first selling

22 period; it neither bought nor sold, right?

23 A. Mm-hmm.

24 Q. Is it your testimony that,

25 without Sonar buying during the first class

1 Tauber - Confidential 159

2 period, the price actually would have been
3 lower during that timeframe?

4 A. And would more accurately reflect
5 the strength of the stock as opposed to the
6 information that's been obtained by an
7 organization illegally and distorting the
8 strength of the stock.

9 So I would agree with you that,
10 as a purchaser or as a seller, there's --
11 there's more money to be made, but in terms
12 of -- of understanding and evaluating the
13 stock, there's a great deal that is lost to
14 the honest stock --

15 Q. Well, during that first class
16 period, just looking at you, how -- how was
17 anything lost?

18 If you look at your transactions
19 from July 19th to August 16th, we see an
20 increase in price there, don't we?

21 A. We do see -- see -- in fact, it
22 goes all the way -- if I'm not mistaken,
23 all the way to \$70.

24 Q. I'm talking about the first class
25 period.

1 Tauber - Confidential 160

2 A. All right. We're talking about
3 the first class period.

4 Q. Right.

5 A. And -- and what I'm telling you
6 is that on a strictly technical basis, and
7 if we -- if you were to work out the math
8 and tell me that I made money during that
9 period, I wouldn't disagree with you. But
10 I would also tell you that the
11 manipulation, the illegal manipulation of
12 the stock by your client, had a deleterious
13 and a serious negative impact on the market
14 and on the stock buyers --

15 Q. How did Sonar's --

16 A. -- and sellers.

17 Q. How did Sonar's trading during
18 the first class period have a deleterious
19 impact on the stock?

20 A. Well, if one were to assume that
21 the stock market is a fair, an unbiased,
22 and a -- a just mechanism, then -- then one
23 acts with that in mind, as I did. But if
24 instead, the prices are being driven up,
25 then there's great -- there's a great loss

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1 in terms of not only the -- the -- the
2 reputation, I think, of the stock and the
3 stock market, but in terms of the
4 perceptions of the people that are -- that
5 are selling the stock. So I -- I -- I
6 grant you -- if you tell me that -- that I
7 made -- that I made money in that first
8 period, that may be true. But clearly, the
9 sellers are -- are victims even if they did
10 make money during that period.
11

12 Q. And tell me how they are victims.

13 How would you -- you have been
14 any different during the first class period
15 if Sonar had neither purchased nor sold
16 stock?

17 A. Well, for one thing, I would be
18 operating what I would assume would be in a
19 -- in an honest and fair auction of shares
20 of stock, as I understand the stock market
21 is supposed to be. But that wasn't the
22 case. And I think that's -- that's a very
23 substantial loss to the -- to the
24 community. It certainly was a huge loss to
25 me.

1 Tauber - Confidential 162

2 Q. It was not a monetary loss in any
3 respect, was it, during the first class
4 period?

5 A. If you tell me that I -- that I
6 made money in the first class period, I'm
7 not going to disagree with you, because I
8 haven't added up those numbers. But what
9 I've told you is that it has an enormous
10 impact on both the system and the
11 individual sellers.

12 Q. Is it your contention that you
13 would be economically in a different
14 position if Sonar had neither purchased nor
15 sold during the first class period?

16 A. Could very well be. I mean, I --
17 I could not -- I cannot, you know -- and I
18 could not at the time certainly tell the
19 future. But I could see that my enthusiasm
20 for the stock would certainly have been
21 different than it was if that manipulation
22 had not occurred. I don't know. There's
23 no way for me to know.

24 Q. Now, are you alleging
25 manipulation in this case?

1 Tauber - Confidential 163

2 A. Yes.

3 Q. Okay. And please describe
4 exactly how manipulation occurred.

5 A. Once again, I -- I haven't spoken
6 to your client. I don't know any of the
7 parties that are involved. I just know
8 what has been presented to me in the form
9 of a complaint, in the form of a
10 memorandum, and in discussions with my
11 attorneys. And as I understand it,
12 information was being presented illegally
13 to your client, and your client was using
14 it to benefit themselves at the expense of
15 legitimate buyers and sellers and
16 distorting the market in a way that was
17 deleterious to everyone.

18 Q. And that's your manipulation
19 claim?

20 A. They made \$30 million. To me,
21 that's manipulation.

22 Q. Who told you that they made
23 \$30 million?

24 A. That's in the complaint.

25 Q. Right. Did you check the

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accuracy of that number?

A. That is the number that I have heard from a number of -- in a number of documents. I have no reason to disbelieve it. If it's off, then perhaps it's less than that. Perhaps it's more than that. That's the round figure that I've been given.

Q. When you make that allegation in a complaint, do you, as a class representative, believe you have an obligation to verify the truth of that statement?

A. I believe that I have the responsibility with my attorney to review the information that we have and to make the very best factual allegation that we can based upon the information that we have.

Q. What records did you look at to lead you to conclude that Sonar made \$30 million in trading Sigma?

A. My information is that I believe on the selling end, if I'm not mistaken,

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1
2 there was some \$20 million, and on the
3 buying end, there was \$10 million. That is
4 in the complaint. That is in, as I
5 understand it, documents that have been
6 produced in discussions with Mr. Freeman,
7 who, I believe -- is it Furman or Freeman?
8 I can't remember -- who has reached an
9 agreement, as I understand it, to provide
10 accurate information. And based upon the
11 information that he provided as well as
12 other parties, that was the number that I
13 discussed with my attorneys, and that is
14 the number that I present to you after
15 those discussions.

16 Q. Are you aware that Sonar has
17 produced its trading records in respect of
18 trading in Sigma during the class periods?

19 A. I'm sorry. I couldn't
20 understand.

21 Q. Are you aware that Sonar has
22 produced its trading records for Sigma
23 purchases and sales?

24 A. I believe --

25 MR. BROWER: Object to the form.

1 Tauber - Confidential 166

2 Go ahead.

3 THE WITNESS: I'm sorry? Go

4 ahead?

5 MR. BROWER: Go ahead.

6 A. I believe that -- that after some

7 very serious foot-dragging, that did occur,

8 yes, sir.

9 Q. All right. And are you aware of

10 whether any steps were taken to verify the

11 allegation that Sonar made \$30 million in

12 profits on Sigma during the class period?

13 A. I am not -- I wish -- I wish I

14 could be more of an expert, but I'm not. I

15 have been given information that I -- I

16 rely on by my attorneys, that I have been

17 informed have been provided by a

18 participant of the manipulation and the

19 insider trading. And that is -- as I

20 understand it, is the most accurate number

21 that they have been able to -- to come up

22 with. As I understand it, it's taken over

23 a year or a year and a half just to get

24 that information from Sonar, and perhaps

25 longer to get the names of the persons and

1 Tauber - Confidential 167

2 organizations and institutions that were
3 paid off with that -- with those monies,
4 however much they were.

5 Q. Actually, you just fairly
6 recently just produced your trading
7 records; isn't that right?

8 A. The confusion that we had, and
9 certainly I had, were recently produced and
10 should have been -- if I had been a little
11 bit -- a little bit sharper and a little
12 bit more experienced, would have been
13 produced immediately. It was -- my
14 understanding is that, actually, the
15 numbers and the dates that come -- that
16 actually exist for the trade are far better
17 for the plaintiff than the settlement dates
18 that were provided previously. So there
19 was no advantage to provide the wrong
20 dates. As a matter of fact, it's -- it's
21 -- it's against the -- the interest of the
22 class.

23 Q. Wrong dates were provided for
24 approximately 20 months before those dates
25 were corrected, correct?

1 Tauber - Confidential 168

2 A. I don't know how long it took. I
3 know that -- that the information that was
4 provided was -- was not for -- for what was
5 requested, at least I know that at this
6 time.

7 Q. Well, you represented trades as
8 having a particular trade date when that
9 was not accurate, correct?

10 A. I was unaware -- you know, I --
11 I've been looking at -- at the Fidelity
12 dates, and I'm still not really sure what
13 the -- what the difference is, because in
14 some instances, the trade -- the settlement
15 date is the next day, and other times, it's
16 four days later, and sometimes it's three
17 days later. So I don't -- I assume the
18 trade date is the date that you -- you --
19 you push the button, and you -- and you
20 purchase or sell -- or you sell new stock.
21 As to whether the settlement date is a
22 certain number of days later, I really
23 don't know. I really can't say any more
24 than that.

25 Q. But you always knew, though, that

1 Tauber - Confidential 169

2 there -- there was a concept of a trade

3 date and a settlement date, correct?

4 A. I knew that they were both

5 concepts. I didn't know that they weren't

6 the same date.

7 Q. You never knew that until

8 recently?

9 A. I knew that they were -- that

10 they -- they sometimes were the same date

11 and sometimes were a day later and

12 sometimes were two days or three or four

13 days later. And I never understood what

14 the difference was.

15 Q. But you know that early on, the

16 defendants, in certain motion papers, had

17 brought to the Court's attention that the

18 prices of the stocks on the -- on the dates

19 that you represented you traded --

20 A. Yeah.

21 Q. -- were different from the market

22 prices that day, correct?

23 A. I understand that now, and I

24 understand from reading transcripts that --

25 that that has been an issue. And -- and I

1 Tauber - Confidential 170

2 am truly sorry for that -- for that error.
3 But once again, my understanding is that
4 the error was in favor of the defendants.
5 So I'm not sure what -- what the point or
6 relevance of -- of this is.

7 Q. Well, let me explain it to you.
8 You provided information where you
9 certified under oath to the Court that --
10 that securities were purchased and sold on
11 a particular date, correct?

12 A. Correct.

13 Q. Right?

14 And that information was provided
15 to the defendants, correct?

16 A. I assume so.

17 Q. Well, it was filed with the
18 Court, right? Makes sense the defendants
19 would get that information, right?

20 A. In my experience, yeah.

21 Q. And wouldn't it make sense that a
22 responsible defendant would look at that
23 information and compare it to the market
24 prices --

25 MR. BROWER: Objection.

1 Tauber - Confidential 171

2 Q. -- of those days?

3 MR. BROWER: Objection.

4 Speculation.

5 Q. Wouldn't that be fair to do?

6 A. Counsel, I'll have to accept

7 your -- your analysis. I am not --

8 Q. I'm not asking you --

9 A. -- a financial --

10 Q. -- to --

11 A. I'm not white collar or a

12 financial attorney, so I couldn't -- I

13 couldn't speak to that.

14 Q. Well, when you gave a trade date

15 -- when you represented information as

16 being trade date information, right --

17 A. Yeah.

18 Q. -- and you identified the number

19 of shares purchased that day and the price

20 of the stock, that was because it was

21 pertinent to your case, right?

22 A. I understood it was necessary,

23 yes, sir.

24 Q. And that's something that the

25 defendants would be entitled to have.

1 Tauber - Confidential 172

2 MR. BROWER: Objection.

3 Q. Right?

4 A. I'll -- I'll -- I'll accede to

5 the fact that -- that this is information

6 you had a right to, yeah, absolutely.

7 Q. Right. And that the defendants

8 -- wouldn't it make sense to you, as a

9 judge, the defendants would look at the

10 date that you swore you purchased or sold

11 securities and verified the accuracy of the

12 information?

13 A. You know -- you know what --

14 what's strange to me is that if -- if --

15 Q. Just answer the question.

16 A. I am answering the question,

17 Counsel.

18 MR. BROWER: Stop arguing with

19 him, Mark.

20 MR. HYLAND: I'm not.

21 MR. BROWER: Ask the question,

22 and he's going to answer. Stop arguing

23 with him. You don't get to play this

24 game. There's no jury here. He's

25 going to answer the question --

1 Tauber - Confidential 173

2 MR. HYLAND: I'm looking forward
3 to the jury.

4 MR. BROWER: -- the way he's
5 going to answer it.

6 MR. HYLAND: This is going to be
7 pretty.

8 MR. BROWER: I'm sure you are.
9 Go ahead. Answer.

10 THE WITNESS: I need the question
11 again, please.

12 (Question read)

13 A. It would, but I would also expect
14 them to find -- not finding them to be
15 accurate, to -- to go back and to -- to
16 inquire as to whether or not they had the
17 correct dates. And as someone who's been
18 in the legal field for 35 years, but in a
19 very different area of the legal field,
20 it's my feeling that that's exactly what
21 competent counsel does.

22 Q. And do you have an understanding
23 that the defendants did not do that?

24 A. My understanding is that the
25 defendants did do that, but they never

Tauber - Confidential

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attempted to inquire as to whether or not they had the right date as opposed -- of the trade as opposed to settlement.

My understanding is that Mr. Druker, just a few days ago, indicated that he didn't know the difference in depositions. So I'm -- I'm not sure why you expect me to have a greater understanding than a man who has been in a financial position for many decades.

Q. Is it your testimony that you understand that Mr. Druker didn't know the difference? Did somebody tell you that?

A. I understand that -- in a deposition, that he did indicate so.

Q. Who told you that?

A. I -- I can -- I can indicate that I had a -- I had a brief discussion with my attorneys.

Q. Okay. You didn't see the testimony, did you?

A. No.

MR. HYLAND: Next exhibit.

MR. BROWER: You're up to 10?

1 Tauber - Confidential 175

2 MR. HYLAND: Yes.

3 (A memorandum of law dated
4 May 15, 2012, was marked as Tauber 10
5 for identification.)

6 MR. BROWER: Two documents.

7 MR. HYLAND: Right.

8 MR. BROWER: You want to mark
9 them 10 and 11?

10 MR. HYLAND: Mark them 10 and 11,
11 sure.

12 MR. BROWER: You have two
13 documents. Take the paper clip off.
14 Take the paper clip off.

15 THE WITNESS: Of this one?

16 MR. BROWER: Yeah. Take the
17 paper clip off. Give her the second
18 piece of paper.

19 THE WITNESS: All right. Is that
20 the one you want underneath?

21 MR. BROWER: She marked them.

22 (An affidavit of Mark J. Hyland
23 was marked as Tauber 11 for
24 identification.)

25 THE WITNESS: 10, 11?

1 Tauber - Confidential 176

2 MR. BROWER: Yes.

3 Q. Okay. If I could direct your
4 attention to Exhibit 10. This is
5 Defendants Sonar Capital Management's and
6 Neil Druker's memorandum of law in support
7 of their motion to dismiss the amended
8 class action complaint, and it's -- it was
9 filed on May 15, 2012.

10 And I'd like to direct your
11 attention to page 3 of the document.

12 A. Yes, sir.

13 Q. And if you go about halfway down
14 -- and this is covered elsewhere -- but you
15 see the sentence starting with, "Not only
16 did Tauber close out his position in
17 Sigma"?

18 A. Yeah.

19 Q. It said, "But his certification
20 to the Court evidences that on all but one
21 of his 114 trades, the price he paid or
22 received for his Sigma shares was
23 significantly outside of the trading range
24 of Sigma stock for those days. Not only
25 does Tauber fail to allege a loss, because

1 Tauber - Confidential 177

2 he sold shares at below-market prices (and
3 bought at above-market prices), he could
4 not plausibly have been relying on the
5 integrity of the market."

6 Now, there, defendants are
7 bringing to your attention and the Court's
8 attention that based on the certification
9 that you gave, your prices were
10 significantly outside of the trading range,
11 correct?

12 A. Correct.

13 Q. Okay. And are you aware that
14 there was a -- an oral argument --

15 A. I am.

16 Q. -- on -- on defendants' motion?

17 A. I am.

18 Q. And are you aware -- have you
19 seen a transcript of that?

20 A. I have.

21 Q. And are you aware that your
22 counsel suggested that the reason for that
23 might have been because you were trading
24 after hours?

25 Are you aware of that?

1 Tauber - Confidential 178

2 A. I read that.

3 Q. Okay. And also, did you read
4 that in the judge's opinion when he granted
5 defendants' motion to dismiss the first
6 complaint?

7 A. I don't recall reading that.

8 Q. Okay.

9 MR. BROWER: I'm not exactly sure
10 what the judge said.

11 Q. That the judge said that the
12 explanation given was perhaps you were
13 trading --

14 MR. BROWER: Perhaps.

15 Q. -- outside of market hours,
16 correct?

17 MR. BROWER: Perhaps. Okay.

18 Q. Right?

19 So at the time that the
20 defendants served their motion and made the
21 allegation about you trading outside of the
22 market, at that point, nobody went back and
23 checked to see if that was correct, right?

24 A. From what I've read, I'm not
25 sure. I don't know. I -- I personally was

1 Tauber - Confidential 179

2 not present, and so I can't really speak to
3 that.

4 Q. Not whether you were present or
5 not, but that after the explanation was
6 provided by counsel, and after the Court
7 referred to the fact that the discrepancy
8 could have been due to the fact that you
9 were trading outside of market hours,
10 nobody on your side went back and made the
11 correction of the trade date versus
12 settlement date.

13 A. Counsel, I --

14 MR. BROWER: Objection to the
15 form. Go ahead.

16 A. I -- I understand that -- that
17 it's a document that -- that -- that I -- I
18 certified. But I -- and I understand that
19 -- that I had -- I have a duty and
20 obligation for it to be correct.
21 Unfortunately, I -- I didn't have the
22 experience or expertise to recognize the
23 error. And quite frankly, I'm not sure of
24 its relevance beyond that.

25 Q. Well, do you think it was unfair

1 Tauber - Confidential 180

2 that the defendants had been led to

3 believe, for some 20 months, that the

4 trading information that you had provided

5 was not accurate?

6 A. I -- I think it's unfortunate. I

7 don't -- I don't know about unfair.

8 Q. Okay. And if I could direct your

9 attention to Exhibit 11.

10 MR. BROWER: Your declaration?

11 MR. HYLAND: Yes.

12 MR. BROWER: Okay.

13 Q. You've seen this before, haven't

14 you?

15 A. I may have. I cannot say that

16 I -- that I definitely have seen it before.

17 Q. If you take a look at the chart

18 on page 3, you don't remember ever looking

19 at that?

20 MR. BROWER: Object to the form.

21 A. I don't have any recollection.

22 Q. But you see that the chart

23 reflects work that was done by the

24 defendants to point out the discrepancies

25 in price based on the information that you

1 Tauber - Confidential 181

2 had provided regarding trade dates,

3 correct?

4 A. Well, if you give me a moment.

5 Q. Sure.

6 (Pause)

7 A. All right. I've read it.

8 MR. HYLAND: Can you read the

9 question back.

10 (Question read)

11 A. I -- I understand that it does

12 that.

13 Q. And that was based on the

14 defendants' understanding that the

15 materials that you provided concerning

16 trade dates were accurate, right?

17 MR. BROWER: Tell me if there's

18 some merit to your argument.

19 Q. You can answer.

20 A. Yeah, I -- I understand. Yeah, I

21 -- certainly, the work that was done was

22 based on inaccurate data.

23 Q. Okay.

24 MR. HYLAND: This is the next

25 exhibit.

1 Tauber - Confidential 182

2 (A deposition transcript was
3 marked as Tauber 12 for
4 identification.)

5 Q. This is a transcript, Exhibit 12,
6 of an argument that took place on
7 September -- excuse me --

8 MR. BROWER: June 19th.

9 Q. -- June 19th.

10 MR. HYLAND: Thank you.

11 Q. 2012.

12 A. Okay.

13 Q. And you've seen this before?

14 A. I'm not sure. Do you want to
15 direct me to a specific place?

16 Q. Well, I -- I think you testified
17 earlier that you had seen a transcript of
18 -- of the argument.

19 A. You know, I did. I just don't
20 recall the appearances as being -- I didn't
21 know that Mr. -- Mr. Kerr was the
22 attorney. I thought -- I thought it was
23 Mr. Brower.

24 Q. Well, if we go to -- if you go to
25 page 28, I'm going to take you over to 29.

1 Tauber - Confidential 183

2 A. Okay.

3 Q. Up at the top --

4 MR. BROWER: Of 29 or --

5 MR. HYLAND: Of 29.

6 A. Okay.

7 Q. And this is the colloquy by

8 Mr. Haber and the Court, the Court asking

9 him.

10 "QUESTION: Just like, you know,

11 millions of people in this country. He

12 lives in California. He is often doing

13 that after the markets would be closed

14 in the east. So maybe those -- and

15 this is just true surmise, all right --

16 maybe those trades were being executed

17 on after hours trading; that the high

18 and the lows for Bloomberg don't

19 reflect what, you know, highs and lows

20 for the after hours trading."

21 A. This is Mr. Haber.

22 Q. Yeah.

23 MR. BROWER: Yeah.

24 Q. Correct.

25 MR. BROWER: Yes.

1 Tauber - Confidential 184

2 A. Who I -- I've -- I've seen in
3 court once.

4 Q. Right. All right.

5 Okay. And following the argument
6 that day, you -- I'm not asking you for
7 substance, but you --

8 MR. BROWER: You don't want to
9 finish where he says, "We honestly
10 don't know"?

11 MR. HYLAND: Yeah. We honestly
12 don't know. That's correct. Yeah.
13 Right.

14 Q. And you heard a -- a report on
15 the -- how the argument went, correct?

16 A. Yeah.

17 Q. And that after that argument,
18 there was no effort at that time made to
19 figure out why the trading records, right,
20 did or didn't reflect a discrepancy in
21 terms of prices.

22 A. Right.

23 Q. Nothing happened, correct?

24 A. I think it went to the judge for
25 a decision. He said he would reach a

1 Tauber - Confidential 185
2 decision by Halloween, if I'm not mistaken.
3 Q. Right.
4 MR. HYLAND: Next exhibit.
5 (An opinion and order was marked
6 as Tauber 13 for identification.)
7 Q. And you've seen the judge's
8 decision on the motion to dismiss?
9 A. I have.
10 Q. The first motion to dismiss?
11 A. I have.
12 Q. And if I could direct your
13 attention to page 10 and 11.
14 A. Okay.
15 Q. And if you go over to 11, about
16 halfway down the first carryover paragraph,
17 there's a sentence --
18 A. Okay.
19 Q. -- starting with "Moreover."
20 MR. BROWER: I'm sorry. Where?
21 MR. HYLAND: On page 11.
22 A. "Moreover"? I don't see
23 "moreover."
24 Q. This is -- make sure we got the
25 right decision. This is opinion and order.

1 Tauber - Confidential 186

2 A. Opinion and order.

3 Q. Right.

4 A. 11 civic 9665.

5 Q. Page 1 of 16. This is a

6 16-page --

7 MR. BROWER: This is 11 of 16.

8 A. Yeah.

9 Q. Page 11, yes.

10 A. Okay.

11 Q. If you go down --

12 MR. KERR: About ten lines down

13 on the first paragraph.

14 Q. Nine lines down.

15 A. Nine lines down.

16 Q. Over on the right.

17 A. Oh, okay. All right.

18 MR. BROWER: That says we'll

19 revisit the issue after --

20 Q. And this is the --

21 MR. HYLAND: Excuse -- excuse me.

22 Q. This is -- this is the judge's

23 decision, correct?

24 A. I believe so.

25 Q. But do you have any doubt?

1 Tauber - Confidential 187

2 Take a look at the last page.

3 A. It appears to have his signature
4 on it. It appears to be an official
5 document with a seal and a file, and, so, I
6 would assume that it is, in fact, his
7 decision.

8 Q. Do you think you would need to do
9 anything else to --

10 A. No, I think that -- that -- that
11 satisfies me.

12 May I read this -- the
13 paragraph --

14 Q. Sure.

15 A. -- you're referencing?

16 MR. BROWER: Be sure to start on
17 the entire page where the paragraph
18 begins.

19 A. May I do that?

20 Q. Sure.

21 A. Okay.

22 (Pause)

23 A. It seems to reflect --

24 MR. BROWER: All right. There's
25 no question pending.

1 Tauber - Confidential 188

2 A. All right. Thank you, sir.

3 Q. He's directing you to where the
4 -- it says "Moreover."

5 It says, "Moreover, the factual
6 context in which Tauber traded is unclear:
7 In addition to the defendants' assertion
8 that Tauber may have been a day-trader or a
9 short-seller, plaintiffs' counsel suggests
10 that Tauber regularly traded after hours,
11 so the prices at which he traded might, in
12 fact, be within the market price range if
13 after hours prices were included."

14 Do you see that?

15 A. I read it.

16 Q. Okay. And where the judge
17 recites, "Plaintiffs' counsel suggests that
18 Tauber regularly traded after hours, so
19 that the prices at which he traded might,
20 in fact, be within the market range if
21 after hours prices were included," right,
22 is not the case, was not the case at the
23 time, correct?

24 MR. BROWER: Objection.

25 A. You're -- you're -- from what I

1 Tauber - Confidential 189

2 understand, the attorney, who is not my
3 attorney, suggested that I might have been
4 trading at night, and he was wrong. And
5 the judge indicated that if it was an
6 issue, it would have to be revisited in an
7 amended complaint, which I understand it
8 was.

9 Q. And you read this opinion and
10 order when it came out, correct?

11 A. I believe so.

12 Q. All right. And when you read it,
13 did you do any sort of -- make any inquiry
14 to make sure that what the judge was saying
15 was true or was not true concerning your --
16 concerning your after hours trading?

17 MR. BROWER: Objection. Witness
18 has testified he did after hours
19 trading. So what are you --

20 MR. HYLAND: Hold on a second.

21 Q. Is it your testimony that your
22 after hours trading was the cause of the
23 discrepancy and prices that are reflected
24 on the certification that you put in to
25 the Court?

1 Tauber - Confidential 190

2 A. No, I'm not -- I'm not suggesting
3 that.

4 MR. BROWER: That wasn't a
5 question.

6 Q. Okay. When was it that you
7 finally decided to check to see if the
8 information that you put in your trading
9 chart, which is Exhibit A, was correct?

10 A. It was in -- it was last year,
11 and counsel brought to my attention that
12 there may have been a mistake made and that
13 I should correct it if that were the case.
14 So I contacted Fidelity and -- immediately
15 and made inquiries, and they provided me
16 with additional information and data that
17 corrected the -- the issue.

18 Q. Up to that point when your
19 client -- your -- your counsel brought that
20 to your attention, did you think that after
21 hours trading was the cause in the
22 discrepancy between the price that you had
23 represented on Exhibit 8 and the market
24 price difference?

25 A. I don't remember reading that. I

1 Tauber - Confidential 191

2 mean, I -- I had the document. I read it.

3 But I don't remember that as -- as -- as

4 something that kind of stuck out.

5 Q. You knew that the defendants were

6 featuring an -- an argument that your

7 trading prices didn't match the market,

8 correct?

9 MR. BROWER: Objection.

10 A. That's -- well, that's not true.

11 I didn't know that that was an issue until

12 much later.

13 Q. Well, it was in the defendants'

14 initial motion to dismiss, correct?

15 A. It was in -- you will have to

16 reference the -- the document.

17 Q. All right.

18 MR. BROWER: I think it's 10.

19 Q. If you go to Exhibit 10, this is

20 defendants' motion, the brief in support of

21 their motion to dismiss the complaint.

22 A. I'm not sure that I've ever seen

23 this. I don't -- I don't believe I

24 testified -- I've testified today that I

25 actually received it.

1 Tauber - Confidential 192

2 Q. Okay. Do you have a best
3 recollection whether you saw Sonar's brief
4 in support of its motion to dismiss?

5 MR. BROWER: Object to the form.
6 Asked and answered twice.

7 Q. Do you think you received it or
8 not?

9 A. I don't recognize it.

10 Q. Okay.

11 MR. HYLAND: Next Exhibit,
12 Exhibit 14.

13 (A memorandum dated August 30,
14 2013, was marked as Tauber 14 for
15 identification.)

16 Q. Exhibit 14 is Defendants' Sonar
17 Capital Management's and Neil Druker's
18 memorandum in support of their motion to
19 dismiss the second amended class action
20 complaint, filed August 30, 2013.

21 A. Yes, sir.

22 Q. Have you seen this document
23 before?

24 A. I believe I did receive this
25 document.

1 Tauber - Confidential 193

2 Q. Believe you did not?

3 A. I believe I did.

4 Q. You did.

5 When?

6 A. It would have been in the summer

7 or -- or the fall of 2013.

8 Q. Did you read it?

9 A. Well, it's not easy reading. I

10 did read it. I couldn't tell you what it

11 says without reading it again.

12 (Pause)

13 (Defendants' reply memorandum of

14 law dated September 20, 2013, was

15 marked as Tauber 15 for

16 identification.)

17 Q. Do you recognize Exhibit 15?

18 A. I believe I have seen this, yes,

19 sir.

20 Q. And this was filed -- up top, you

21 see it was filed on September 20, 2013?

22 A. Yep.

23 Q. If I could direct your attention

24 to the first page under "Preliminary

25 Statement."

1 Tauber - Confidential 194

2 The first sentence says,
3 "Twenty months after the amended complaint
4 was filed, plaintiffs now state that the
5 trade data they represent -- and which
6 Tauber certified as accurate in his lead
7 plaintiff motion -- is wrong."

8 Do you see that?

9 A. I see that.

10 Q. And that's a true statement,
11 correct?

12 A. That's correct.

13 MR. HYLAND: Let's take a break.

14 THE VIDEOGRAPHER: Stand by,
15 please.

16 The time is 3:07 p.m. This is
17 the end of DVD 3. We are off the
18 record.

19 (Recess)

20 THE VIDEOGRAPHER: Stand by,
21 please.

22 The time is 3:19 p.m. This is
23 the beginning of DVD No. 4. We are
24 back on the record.

25 EXAMINATION CONTINUED

1 Tauber - Confidential 195

2 BY MR. HYLAND:

3 Q. If I could direct your attention
4 back to Exhibit 13, which is the opinion
5 and order filed June 13, 2013.

6 A. Which exhibit again?

7 Q. 13.

8 A. 15, 14 -- yes, sir.

9 Q. Yeah. I'd like to direct your
10 attention again to page 11.

11 Again, starting at the same
12 language we looked at earlier, about
13 halfway down, starting with the word
14 "Moreover," do you see that?

15 A. Mm-hmm.

16 Q. Just read that sentence to
17 yourself.

18 And the way the paragraph ends,
19 it says, "Accordingly, this issue may be
20 revisited once any amended pleading is
21 filed," right?

22 A. Yes, sir.

23 Q. And after this decision came
24 down, an amended complaint was filed,
25 right?

1 Tauber - Confidential 196

2 A. I understand that's correct, yes.

3 Q. Okay.

4 THE WITNESS: That would be the

5 second amended complaint?

6 MR. KERR: It's right there.

7 THE WITNESS: Okay.

8 (A second amended class action

9 complaint was marked as Tauber 16 for

10 identification.)

11 A. Yes, sir.

12 Q. And this is the second amended

13 class action complaint that was filed after

14 the Court's opinion and order reflected in

15 Exhibit 13, correct?

16 A. I believe so, yes, sir.

17 Q. And in Exhibit 13, a Judge Rakoff

18 had said, "Accordingly, this issue may be

19 revisited once any amended pleading is

20 filed."

21 And the issue he was referring to

22 was that -- was -- was the issue of the

23 discrepancy in the trade date prices versus

24 the market prices that had been reflected

25 on your certification, correct?

1 Tauber - Confidential 197

2 A. I understand that to be the case.

3 Q. But the second amended class
4 action complaint that was filed,
5 Exhibit 16, a month later, five weeks
6 later, does not address, again, the issue
7 of trade date, settlement date, or the
8 market prices that apparently were outside
9 of the range, correct?

10 A. I wouldn't know that unless I
11 read the document.

12 Q. Did you review the second amended
13 complaint before it was filed?

14 A. I believe I did have an
15 opportunity to read it.

16 Q. Did you comment on it in any way?

17 A. That I could not say.

18 Q. Do you remember making any
19 comments on it?

20 A. I do not recall making any
21 comments on it.

22 Q. If you go to the back, the
23 exhibits, what is reflected on these
24 exhibits to your complaint?

25 A. Which exhibit were you

1 Tauber - Confidential 198
2 referencing?
3 MR. BROWER: Exhibit A.
4 Q. Start with A.
5 A. It's a comparison of price and
6 number of shares sold by Sonar compared to
7 those or the similar -- well, let me just
8 -- let me just back up one moment.
9 It shows Sigma -- Sonar's
10 purchase and -- and share price as compared
11 to the shares that I sold. And, so, it's
12 -- it's a comparison chart.
13 Q. Who prepared it?
14 A. I did not prepare it.
15 Q. Did you check it?
16 A. I had an opportunity to review
17 it, which I did.
18 Q. You did?
19 A. Yes, sir.
20 Q. What did you compare it with?
21 A. I compared it with the document.
22 I checked it for any -- any obvious errors.
23 I did not have with me at that time the
24 actual Fidelity documents. So I didn't go
25 through each one.

1 Tauber - Confidential 199

2 Q. Okay. But isn't it the case that
3 where shares are represented as having been
4 purchased or sold by you, that you took the
5 very same information that was in the chart
6 that you and your attorney completed and
7 which is reflected in Exhibit 8?

8 A. I'd have to go over that at this
9 time. I'm -- I -- I don't know.

10 Q. Well, you represent in the second
11 amended complaint that you sold 9,000
12 shares on July 30, 2007, correct?

13 MR. BROWER: I can't read your
14 handwriting.

15 A. That -- that appears to be
16 correct.

17 Q. Why do you say it appears to be
18 correct?

19 A. Because that's what I'm -- what I
20 -- when I'm looking at it, that's what I
21 see.

22 MR. BROWER: Are -- are you --

23 Q. I'm looking at --

24 A. I'm looking at the certification.
25 Isn't that what you asked me to do?

1 Tauber - Confidential 200

2 Q. I'm looking at the exhibit to the
3 second amended complaint.

4 A. And I'm looking at the
5 certification. I thought you asked me if I
6 had gone to the certification to compare it
7 and what I would -- what I would see.

8 Q. Here's what I'm asking you.

9 MR. BROWER: Let him restart.

10 Q. I'll start over again.

11 A. Okay.

12 Q. Were you aware that you are
13 required, when you file a class action
14 complaint alleging violation to the
15 securities laws, that you must identify
16 your trades in the securities during the
17 relevant period about which you're
18 complaining?

19 A. I believe I -- I am aware of
20 that.

21 MR. BROWER: Objection. You want
22 to show him a copy of the PSLRA?

23 MR. HYLAND: No.

24 MR. BROWER: Then your
25 characterization is incorrect.

1 Tauber - Confidential 201

2 MR. HYLAND: Okay.

3 Q. What -- what was the purpose of

4 Exhibit A?

5 MR. BROWER: Are you talking

6 about that Exhibit A?

7 MR. HYLAND: I'm talking about

8 the Exhibit A.

9 MR. BROWER: Okay. Okay.

10 MR. HYLAND: Exhibit A to the

11 second amended complaint.

12 MR. BROWER: Okay. This is

13 different.

14 Q. Okay. What is the purpose of

15 attaching this chart?

16 A. I -- I believe it's to show the

17 -- the change in value and the loss to a

18 named complaint.

19 Q. Where does it show that for you?

20 A. Let me -- let me restate that.

21 It appears to show shares, share prices,

22 and dates that Sigma shares were purchased

23 by Sonar. It also shows dates in which

24 Sigma shares were purchased by myself.

25 Q. Right. And I'm going to focus on

1 Tauber - Confidential 202

2 the dates.

3 You said purchased by yourself?

4 MR. BROWER: No.

5 MR. HYLAND: Please, Mr. Brower.

6 A. I'm sorry. Did I say purchased?

7 Thank you.

8 Q. You meant sales?

9 A. I meant sales.

10 Q. All right.

11 A. I'm looking at --

12 MR. BROWER: He's reading.

13 A. -- the document, and I'm reading

14 the titles.

15 Q. And so, in the last paragraph, it

16 says, "Sigma shares sold by named

17 plaintiffs," correct?

18 A. Right.

19 Q. And under that, it says, "Monday,

20 July 30, 2007, 9,000 Tauber."

21 So you're representing to the

22 Court you sold 9,000 shares of Sigma on

23 Monday, July 30th, correct?

24 A. That's what that represents.

25 Q. Okay. But, again, that is not

1 Tauber - Confidential 203

2 the actual trade date, is it?

3 A. From what I understand, it is
4 not.

5 Q. And similarly, with respect to
6 the sales on August 16, 2007, where it says
7 you sold 18,000 shares of Sigma, that also
8 does not represent the trade date, does it?

9 A. I understand that that's
10 incorrect.

11 Q. Okay. Now, in the second amended
12 complaint, did you change the class periods
13 about which you were complaining?

14 A. I don't recall.

15 Q. Do you remember at any point
16 whether the class periods changed in any
17 respect?

18 A. I believe I did discuss that with
19 Mr. Kerr, yes, sir.

20 Q. And why did the class periods
21 change?

22 A. My recollection is that they were
23 changed because new information had been
24 discovered that reflected different dates.

25 Q. What new information?

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1
2 A. I'm not exactly certain, but I
3 think that it was a confluence of
4 information that -- that made its way to
5 counsel through Mr. Freeman through
6 discovery. And on that basis, I was told
7 that it was appropriate to change the
8 dates. And we discussed that and agreed to
9 do it.

10 Q. Well, when you initially became a
11 plaintiff, you purported to represent a
12 class of sellers from July 13, 2007, to
13 November 27, 2007, right?

14 A. That sounds correct.

15 Q. And in your second amended
16 complaint, if you look at Exhibit A here,
17 okay, the one that we were just looking at,
18 Exhibit A to Exhibit 16, we see
19 transactions from July 13, 2007, to
20 August 21, 2007, correct?

21 A. Correct.

22 Q. Do you see that?

23 And then if you go to Exhibit B
24 of the same exhibit, the next block, the
25 next period runs from September 11, 2007,

1 Tauber - Confidential 205

2 to November 27, 2011, correct?

3 A. That appears to be correct.

4 Q. And, so, this is your second

5 class period now, correct?

6 A. Yes, sir.

7 Q. So you see that there's a gap,

8 don't you, between August 22nd and

9 September 20, 2007, where you're not

10 representing anybody?

11 MR. BROWER: Objection.

12 Q. Do you see that?

13 A. I see that, yes, sir.

14 Q. Why did that happen?

15 A. Well, the best of my

16 recollection, this -- the two class periods

17 that were established were periods that the

18 data supported in the complaint.

19 Q. What data?

20 A. The data that exists in these

21 complaints, meaning the dates reflect new

22 information that had been discovered as I

23 understood it through counsel.

24 Q. What new information?

25 A. That -- that I could not say at

1 Tauber - Confidential 206

2 this time. It has been probably two years.

3 Q. Well, you have these very same

4 class periods in your third amended

5 complaint, correct?

6 A. As in the second?

7 Q. Yes.

8 A. I'd have to look at that, sir.

9 Q. When was the third amended

10 complaint filed?

11 A. If I saw the document, I could

12 tell you. I believe it -- it was within

13 the last several months, if I'm not

14 mistaken.

15 Q. What's your best recollection?

16 A. This past fall.

17 Q. All right. Did you review it?

18 A. I did.

19 Q. How does it differ from the

20 second amended complaint?

21 A. You're asking me about a document

22 that I have not -- that I don't have in

23 front of me, and I cannot tell you the

24 difference, especially since the third

25 complaint has perhaps 200 pages or

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something close to it, including exhibits.

Q. What's the -- can you describe any differences between the third amended complaint and the second amended complaint?

A. No. Well, I could tell you one, certainly. I understand that among the more recent discovery were the names that -- of defendants who had benefitted directly from the illegal activity. And that information was only recently discovered, at least to my knowledge.

Q. And who are such persons?

A. You're asking me to tell you from memory the names? I could tell you one. I believe Mrs. Druker was one of the defendants, if I'm not mistaken.

Q. Anyone else?

A. No. I'd have to -- once again, I'd have to take a look at it. I did -- I looked -- I looked at it very recently. I looked at it sometime ago. But names, as I indicated earlier, are difficult for me.

Q. And what -- looking at the second class period, and that runs from

1 Tauber - Confidential 208

2 September 11, 2007, to November 27, 2007?

3 A. Which document, sir?

4 Q. Yeah. Just the --

5 MR. BROWER: Second amended

6 complaint.

7 Q. -- second amended complaint.

8 It's Exhibit 16. And why don't you go to

9 Exhibit B.

10 A. Yes, sir.

11 Q. All right. Can you describe your

12 allegations, your theory of the case

13 regarding the second class period.

14 A. I believe that this is the same

15 theory as found on page 59 in Exhibit A.

16 There are the shares of Sigma purchased by

17 Sonar, the dates of those -- of those

18 purchases, the share price, and the value,

19 total value of the shares purchased by

20 Sonar. And then there are the dates of

21 shares sold by both Mr. Gordon and myself.

22 Q. And what are the alleged acts of

23 wrongdoing during this particular class

24 period?

25 A. Well, I think the harm alleged,

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1 as exists in -- in A, is that both myself
2 and Mr. Gordon certainly might have acted
3 differently if we were aware of the
4 information that had been illegally
5 obtained by Sonar, meaning that instead of
6 selling, we might have retained the stock
7 and achieved the remuneration or at least
8 the percentage of remuneration that Sonar
9 was able to achieve illegally.
10

11 Q. Are you alleging that the
12 information that Sonar allegedly had should
13 have been shared with the market, or are
14 you alleging that Sonar simply should not
15 have traded in the security?

16 A. I --

17 MR. BROWER: Object to the form.

18 Go ahead.

19 A. I think that inside trading is
20 immoral and illegal act that undermines the
21 credibility of the stock market. It
22 certainly has kept me away from the stock
23 market, although there are other
24 circumstances that do as well.

25 Q. Okay. But specifically, what

1 Tauber - Confidential 210

2 acts of wrongdoing do you allege Sonar

3 engaged in?

4 A. I think we've gone -- we've

5 gone --

6 Q. No, during the second class

7 period.

8 A. Oh, specifically?

9 All right. They had information,

10 and on the basis of that information, they

11 purchased large quantities, enormous

12 quantities, in one instance, \$10 million of

13 -- of Sigma stock that, if we, Mr. Gordon

14 and myself and other members of the class

15 were aware of, might have meant that we

16 would not have sold the stock at the price

17 we did, and we would have gained the

18 advantage that Sonar obtained illegally.

19 Q. How did -- how did Sonar's

20 alleged acts hurt you?

21 A. I think I just explained it.

22 Q. No. You say that -- as I

23 understand --

24 MR. BROWER: Objection. You're

25 arguing with the witness.

1 Tauber - Confidential 211

2 Q. Your allegation is that Sonar --
3 your allegation is that Sonar engaged in
4 illegal insider trading, correct?

5 A. That's my understanding, yeah.

6 Q. Okay. And, so, you're saying
7 that Sonar should not have done that.

8 And you know that Sonar has
9 denied this, of course, right? I'm just
10 speaking hypothetically.

11 And you're saying that Sonar
12 should not have done that.

13 A. Correct.

14 Q. Right?

15 Okay. So you're saying by Sonar
16 doing that, Sonar made money that it should
17 not have made, correct?

18 A. Right.

19 Q. All right. How did that hurt
20 you?

21 A. Well, specifically, if that
22 information had been made available, as you
23 suggested as one of the possibilities to
24 the market, we might have -- and I
25 certainly would not have sold, but made

1 Tauber - Confidential 212

2 purchases. And in doing so, I think I
3 would have profited very substantially.
4 And, you know, that's -- that's really all
5 I have to say.

6 Q. You did make purchases during
7 this period, correct?

8 A. I made purchases and I also made
9 sales.

10 Q. You -- you purchased more than
11 you sold, didn't you?

12 A. I would have to review that --
13 that data. I'm not -- I'm not certain
14 about that.

15 Q. Okay. You've never reviewed
16 that?

17 A. At one point, I did, yes, sir.

18 Q. All right. Are you alleging for
19 the second class period that Sonar somehow
20 pushed the price of the Sigma securities
21 up?

22 A. I think that's part of it. As I
23 look at -- I'm just surmising, just -- just
24 looking at the numbers. It looks to me
25 like there's something like 30 to

1 Tauber - Confidential 213

2 \$40 million worth of Sigma stock that was
3 purchased in -- in about six weeks. And I
4 think that could have substantially
5 affected the market and, certainly, my
6 behavior.

7 So, yes, I think it could have
8 manipulated the price. But, once again, I
9 think that the second part of that is that
10 information that was illegally gained was
11 denied to a -- to an honest shareholder or
12 purchaser who sold -- who might sell rather
13 than -- than either retain stock or
14 purchase stock.

15 Q. If -- if Sonar had obtained that
16 information, which you contend was
17 illegally obtained, and not traded, but
18 obtained it, and not traded, would you have
19 any claim?

20 MR. BROWER: Objection.

21 A. Isn't that an illegal conclusion?

22 Q. No.

23 MR. BROWER: Yes, it is.

24 A. I -- I -- I'm not prepared to
25 answer that. I don't have the expertise or

1 Tauber - Confidential 214

2 the knowledge to answer that.

3 Q. If Sonar's purchases during the

4 second class period pushed the price of

5 Sigma up, correct --

6 A. Yeah, yeah.

7 Q. -- that would have meant that

8 your sales were at a higher price than they

9 otherwise would have been, correct?

10 A. If I sold it all.

11 Q. Well, you're representing a class

12 to sellers, aren't you?

13 A. I am, but that class could very

14 well have retained their shares rather than

15 sold them if they were privy to the

16 information that -- that Sonar was.

17 Q. But they would have gotten a

18 higher -- they would have received a higher

19 price had Sonar not purchased to begin

20 with, right?

21 A. Well, if you're suggesting that

22 Sonar is pushing -- could be pushing the

23 price up, I think that's -- that's probably

24 accurate. I mean, I have no idea whether

25 that's the case or not. I believe that --

1 Tauber - Confidential 215

2 that it certainly appears to be.

3 I mean, once again, I'm not an
4 expert, but I believe that -- that pumping
5 \$40 million or so into a relatively small
6 stock probably is pushing the price up.
7 And I suppose that sellers would get more
8 money. But at the same time, they might,
9 in fact, become buyers, and they might, in
10 fact, retain rather than sell their stock.

11 Q. And if that had become -- the
12 information that you contend Sonar obtained
13 illegally had become public before Sonar
14 purchased, what would have happened?

15 A. Once again, you're asking me to
16 -- to speculate, and we don't do that in
17 California.

18 Q. If the information had become
19 public, everybody would have access to it,
20 then, correct?

21 A. I would think so, yeah.

22 Q. And would that have moved the
23 stock up or down under your theory?

24 A. I think that it would -- it --
25 you know, I -- quite frankly, I'm -- I'm

1 Tauber - Confidential 216

2 just not savvy enough to -- to give you any
3 kind of definitive answer. The best I can
4 do is to say that -- that if there's good
5 information out there, that more people
6 would obviously be looking at Sigma to buy.
7 But that -- I'm not sure that necessarily
8 is the same thing as where a company takes
9 advantage of information and denies it to
10 the remainder of the market.

11 Q. And then you have a third class
12 period, correct?

13 A. Yes, sir.

14 Q. And what are you -- who do you
15 purport to represent during this third
16 period?

17 A. These would be the buyers and
18 those persons who bought in the period from
19 December 20th through March 12th.

20 Q. All right. And what is your
21 theory of wrongdoing alleged against Sonar
22 during this period, the buyer period?

23 A. I think it's actually clearer in
24 this particular segment because they have,
25 in essence, driven the price up. And in

1 Tauber - Confidential 217
2 doing so, they've created an expectation
3 among stockholders. And when they withdrew
4 their money because they had insider
5 information that was detrimental, buyers
6 were still under the impression that the
7 stock was -- that it had legs, that it was
8 substantial, that it was going to continue
9 to grow, whereas the only player on the
0 block who knew it was -- was not so was
1 getting out of the market as quickly as
2 possible.

13 Q. And what did Sonar know that you
14 contend was constituted material nonpublic
15 information?

16 A. My recollection from the
17 complaint and from discussions with counsel
18 and other information that was relayed to
19 me is that -- I don't want to get the wrong
20 company, but I believe it was Panasonic.
21 I'm not sure. There was -- it may have
22 been Motorola.

23 There was a major company that
24 had purchased a large quantity of product
25 in the third quarter, previous third

1 Tauber - Confidential 218

2 quarter, that had pulled out. And that was
3 enormously detrimental to -- to Sigma. And
4 having that information and using it to
5 sell 112,000 shares at 62.84, 156,000
6 shares at 49.15, I think, was very
7 detrimental. I was purchasing at the time
8 they were selling as well as, I'm sure,
9 thousands of others.

10 Q. You were selling also, weren't
11 you?

12 A. I believe so, yes, sir.

13 Q. Okay. Now, in these exhibits to
14 the second amended complaint, for the
15 two -- what I call -- selling class
16 periods, you just identify the shares that
17 you sold, correct?

18 A. I'm sorry. I don't understand
19 the question.

20 Q. Yes. Go to Exhibit 16.

21 MR. BROWER: Mr. Hyland, I'm
22 going to object. Why don't you go to
23 paragraph 97 of the complaint.

24 Q. Exhibit 16.

25 MR. BROWER: Why don't you go to

1 Tauber - Confidential 219
2 paragraph 97 of the complaint first,
3 since that's a misleading question.
4 You're going through exhibits that the
5 exhibits themselves are described in
6 the body of the complaint as to what
7 they are.
8 MR. HYLAND: Yeah.
9 MR. BROWER: It's paragraph 97,
10 paragraph 111.
11 MR. HYLAND: Got it. Yeah.
12 Fine.
13 MR. BROWER: Okay.
14 Q. Same question. If you go to
15 Exhibit A, B, and C.
16 A. Okay.
17 Q. During -- on this chart on
18 Exhibit A, this reflects -- this reflects
19 the first selling class period, right?
20 A. Just give me a moment. It's like
21 a very long day in court.
22 All right. Yes, sir. A, B, and
23 C.
24 Q. Yeah. Exhibit A, okay?
25 A. Yes, sir.

1 Tauber - Confidential 220

2 Q. This is a selling class period

3 where you purport to represent sellers,

4 right?

5 A. Yes, sir.

6 Q. And you identify your sales,

7 correct?

8 A. Yes, sir.

9 Q. You don't identify your buys,

10 correct?

11 A. I do not see it here, no, sir.

12 Q. Okay. Exhibit B. You are

13 representing again a separate period,

14 during a separate period, a class of

15 sellers, correct?

16 A. Correct.

17 Q. And you identify your sales but

18 not your purchases, correct?

19 A. Correct, yeah.

20 Q. And in Exhibit C, the third class

21 period, you're representing -- this time,

22 you're representing a class of buyers,

23 correct?

24 A. Correct.

25 Q. And you're representing your

1 Tauber - Confidential 221

2 sales that you purchased but not sold,

3 right?

4 A. That's correct.

5 MR. BROWER: For the record, the

6 third paragraph as found in Exhibit C

7 is paragraph 120 of the complaint, and

8 all three of those paragraphs describe

9 that's exactly what's on the chart,

10 contemporaneous --

11 MR. HYLAND: They also don't

12 disclose --

13 MR. BROWER: -- sales.

14 MR. HYLAND: They also don't

15 disclose the opposite trading.

16 MR. BROWER: Whatever that means.

17 (Pause)

18 A. Is this -- is this a reasonable

19 time to take a short break, maybe just

20 about ten minutes?

21 Q. That's okay.

22 A. Five minutes? Ten minutes?

23 Q. Yes.

24 A. Something like that?

25 Q. Let's go for five.

1 Tauber - Confidential 222

2 THE VIDEOGRAPHER: Stand by,
3 please.

4 The time is 3:56 p.m. We are off
5 the record.

6 (Recess)

7 THE VIDEOGRAPHER: Stand by,
8 please.

9 The time is 4:06 p.m. We are
10 back on the record.

11 EXAMINATION CONTINUED

12 BY MR. HYLAND:

13 MR. HYLAND: 17.

14 (A third amended class action
15 complaint was marked as Tauber 17 for
16 identification.)

17 Q. Do you recognize Exhibit 17?

18 A. I do.

19 Q. And what is it?

20 A. Third amended class action
21 complaint.

22 Q. It was filed on December 30,
23 2014?

24 A. Just one moment.

25 Filed December 30th, yes, sir.

1 Tauber - Confidential 223

2 Q. Did you receive a draft of this
3 complaint before it was filed?

4 A. I did.

5 Q. Were you asked to comment on it?

6 A. I was.

7 Q. Did you have any comments on it?

8 A. We had a conversation, I recall,
9 about what had taken place in terms of the
10 negotiated plea and discovery that had been
11 made and -- and the potential for clawing
12 back against the named defendants.

13 Q. Did you have any comments on the
14 complaint, on the draft complaint?

15 A. I don't recall anything
16 specifically, no, sir.

17 Q. Anything general?

18 A. No. It seemed to me to be -- to
19 be good work.

20 Q. On any of the complaints, did you
21 ever have a comment that you, in fact,
22 wrote on the document and sent back to
23 counsel?

24 A. Virtually all the comments
25 were -- were conveyed by telephone.

1 Tauber - Confidential 224

2 Q. Can you remember what any of the
3 comments were?

4 A. I remember I wanted to know what
5 "clawed back" meant.

6 Q. Okay.

7 A. And I wanted to know what the
8 process was and the procedures.

9 Q. Okay. Have you ever met Noah
10 Freeman?

11 A. No.

12 Q. Have you researched his
13 background at all?

14 A. No, just what I've read in the --
15 in the complaint.

16 Q. Do you have any other information
17 about Noah Freeman other than what you've
18 read in the complaint?

19 A. From discussions with my counsel.

20 Q. Okay. Are you aware that he's an
21 admitted drug user?

22 A. I think -- I'm trying to
23 remember, but I -- it is -- there's a -- I
24 have some vague recollection in the
25 complaint. But perhaps -- I quite honestly

1 Tauber - Confidential 225

2 couldn't say.

3 Q. Are you aware that he -- he

4 testified at the trial of Winnie Jiau?

5 A. No. I may have read it, but I

6 don't recall it.

7 Q. You didn't read any of the

8 transcripts of the testimony at the Winnie

9 Jiau trial?

10 A. I don't recall reading that.

11 Q. Okay. Did you ever hear that --

12 that Freeman admitted to hallucinating on

13 mushrooms, drug-laced mushrooms, and

14 running around the streets of San Francisco

15 in his underwear?

16 A. You know, this stuff is vaguely

17 familiar. I can't recall whether it was in

18 something I've read that you submitted. I

19 kind of think it was, and I can't recall in

20 what document. I'm -- I'm just trying to

21 be as straight as I can. I -- I've heard

22 the allegation somewhere, and I think it

23 was in one of your documents.

24 Q. Do you want to think again about

25 that last allegation?

1 Tauber - Confidential 226

2 A. I'm not -- I'm not --

3 Q. Have you heard that last

4 allegation before?

5 A. I've heard the last -- the

6 allegation before.

7 Q. All right.

8 A. Whether -- whether -- and as to

9 whether it's in one of your documents or

10 not, I -- I couldn't say.

11 Q. All right. Have you heard that

12 Noah Freeman actively participated in

13 triathlons?

14 A. I don't remember that part.

15 Q. Okay. You didn't hear that he

16 used performance-enhancing drugs to improve

17 his performance in those?

18 A. I don't recall anything about

19 marathons or running.

20 Q. Did you hear anything about him

21 receiving illegal prescription drugs?

22 A. The part about being a drug

23 addict is -- it's kind of -- rings a bell,

24 but the other stuff doesn't.

25 Q. Did you hear any allegations that

1 Tauber - Confidential 227

2 he assisted in the purchase of -- of

3 supplying prostitutes to contacts?

4 A. No.

5 Q. Okay. If those -- if -- if those

6 things were true, if they were true, in

7 your mind, as a judge, would they affect

8 his credibility?

9 MR. BROWER: Objection.

10 Q. Based on your experience.

11 MR. BROWER: Objection.

12 A. Counsel, I -- I -- I'm a trial

13 judge, not a jury. I don't -- I don't make

14 those kinds of determinations. I leave

15 that to the jury.

16 Q. You've had bench trials before,

17 haven't you?

18 A. I certainly do.

19 Q. You know the difference between a

20 bench trial and a jury trial?

21 A. I certainly do, Counsel.

22 Q. And in a bench trial, you are the

23 finder of facts?

24 A. And credibility.

25 Q. Correct.

1 Tauber - Confidential 228

2 A. Yeah. It -- it depends on so
3 many things. You know --

4 Q. Okay.

5 A. -- it's -- to say that it would
6 have no impact would not be true, but to
7 say that it would have a substantial impact
8 would be probably overstating the case. It
9 would be one of the factors that I would
10 consider. If you're a judge or if you're a
11 juror, you're expected to take in all the
12 information that you can and to use it and
13 weigh it in an unbiased fashion.

14 So in California, at least, there
15 are certain things we can consider and
16 certain things we can't. For example,
17 being a drug addict or being charged with
18 -- being under the influence is not one of
19 the things you can charge or prove as a
20 prior or use his character for impeachment.
21 So it really depends where you are.

22 Q. And you do give standard jury
23 instructions that if a -- if a juror
24 concludes that a witness has lied on the
25 witness stand, the jury -- the juror is

1 Tauber - Confidential 229

2 entitled to, but not required to, disregard

3 the witness' testimony in its entirety,

4 correct?

5 A. Not entitled, but may.

6 Q. What did I say?

7 A. They may consider it, but are not

8 to use it. I'm not sure I could -- I could

9 repeat it exactly, but basically what you

10 said is correct.

11 Q. All right. And in your

12 experience, you have -- you -- you -- you

13 have had the occasion to deal with

14 defendants who have pleaded guilty and

15 become cooperators, correct?

16 A. It's -- it's certainly happened

17 in -- in my court, yeah, yeah.

18 Q. Okay. And one of the reasons

19 that -- a primary reason that a defendant

20 will cooperate is the hopes of receiving a

21 lesser sentence, correct?

22 A. Yeah, of course.

23 Q. And generally, the more people

24 that a cooperating defendant can implicate,

25 the better the chance for a lighter

1 Tauber - Confidential 230

2 sentence.

3 MR. BROWER: Objection.

4 Q. Right?

5 A. You know, that's really the --
6 maybe that's in federal court. But in --
7 in -- in state court, if -- if there's a
8 cooperative witness and the prosecution
9 makes a request, the Court will consider
10 it. But I'm not one that automatically
11 sentences on the basis of -- of a
12 recommendation from the prosecution.

13 Q. But a cooperating defendant has
14 that hope that, by the cooperation, they
15 would get a reduced sentence, correct?

16 A. And -- and it does happen.

17 Q. Okay. Are you aware that Noah
18 Freeman wore a wire in conversations with
19 his -- his best friend?

20 A. Vaguely familiar. I'm sorry.
21 That's -- that's the best I can do. I may
22 have read it in the complaint or in some
23 other document.

24 Q. You think it's in the complaint?

25 A. You know, I don't know. It just

1 Tauber - Confidential 231

2 seems to me like I've -- I've -- I've read

3 that, and it may have been in a memorandum

4 or some other document.

5 Q. Okay. Have you ever heard of

6 Don Longueuil?

7 A. No.

8 Q. All right. Have you ever heard

9 of Thai Nuan?

10 A. No.

11 Q. No?

12 A. Like I said, I'm not great on

13 names.

14 Q. Okay. Have you ever heard of

15 Abaxis?

16 A. Yeah. I have heard of that.

17 Were they a defendant or -- or one of the

18 defendants? I -- I'm -- I'm trying to put

19 it back together. I've heard the name, if

20 that's your question, yeah.

21 Q. Okay. And you reached a

22 settlement with Noah Freeman, correct?

23 A. Yes, sir.

24 Q. And what factors did you weigh in

25 determining whether the settlement was

1 Tauber - Confidential 232

2 reasonable?

3 A. Well, I'm a little bit

4 uncomfortable answering that, and I'm going

5 to defer to my counsel. It just seems like

6 it's something that -- that -- that ought

7 to be covered by lawyer-client privilege.

8 THE WITNESS: But -- but you tell

9 me.

10 MR. BROWER: Try it another way.

11 Q. You -- you approved the

12 settlement, correct?

13 A. Correct.

14 Q. Okay. And did you consider any

15 factors in determining whether or not you

16 should agree to what Noah Freeman was

17 proposing and what you ultimately agreed

18 to?

19 MR. BROWER: You can go ahead.

20 THE WITNESS: Thank you.

21 A. My recollection is that he had

22 agreed to provide the names of defendant or

23 corporations that -- or institutions that

24 had been -- that had benefitted from

25 illegality. My understanding that -- is

Tauber - Confidential 233

that he is to be sentenced, if I'm not mistaken. My understanding is that he has opted to engage in a financial settlement, as -- as -- as being a partial settlement of this case. And, I believe, if I'm not mistaken -- and this -- some of this stuff I'm trying to remember from six months or a year ago, but it was about a half million dollars, if I'm not mistaken.

Q. Half a million dollars what -- that he's paying?

A. That he's paying. That may be news to you.

Q. Did he -- did -- did you -- did you consider his personal financial situation and ability to pay?

A. I don't recall. I think there was some discussion about that, and that he had -- he had limited ability to pay.

Q. But you've never met Mr. Freeman.

A. No.

Q. Do you have any desire to?

A. Not really. In fact, this whole week could disappear, and that would be

1 Tauber - Confidential 234

2 just fine.

3 Q. When you were making investment
4 decisions back in -- you know, generally,
5 back in 2000 -- 2006, 2007, 2008 --

6 A. Sure.

7 Q. -- was it your intention -- was
8 it your general thesis to -- to buy and
9 hold securities?

10 A. You know, it was, and with the
11 idea of obviously making a lot of money and
12 -- and leaving the market. So I had a
13 long-range goal to do that. I wasn't -- my
14 plan wasn't a ten-year plan. It was more
15 like, I would say, three to five years.

16 Q. And with respect to your
17 transactions in Sigma, though, each month,
18 you were -- you were -- during the three
19 class periods or each -- during each class
20 periods, you were buying and selling,
21 correct?

22 A. I was. And -- and some of it --
23 some of it actually surprises me. And when
24 I think back to it, it was a -- a very --
25 it was a difficult time.

1 Tauber - Confidential 235

2 Q. Was that -- was that pattern of
3 -- of buying and selling Sigma -- was --
4 was that consistent with the way you were
5 buying and selling other securities?

6 MR. BROWER: Objection. You can
7 answer.

8 A. I -- no, it wasn't. It -- it
9 was -- it was a stock that I -- I saw rise
10 from a relatively modest cost, and -- and,
11 so, it was my intention to benefit from it
12 if I could. And, certainly, there was a
13 possibility that I could attain my goals
14 and -- and leave the market in -- in a --
15 in a beneficial position.

16 Q. Now, ultimately, ultimately, you
17 -- you lost a lot of money trading Sigma,
18 correct?

19 A. Yes, sir.

20 Q. But during the three class
21 periods that are at issue here, you made
22 money, correct?

23 MR. BROWER: Objection.

24 A. Once again, I -- I haven't done
25 the addition, so I couldn't tell you.

1 Tauber - Confidential 236

2 Q. All right. And, so, when did you
3 incur your substantial losses in Sigma?

4 A. I incurred losses starting
5 probably in November. I think it topped
6 out -- I was just looking at a document --
7 at 68 or something in that -- that
8 vicinity, if I'm not mistaken. And it
9 started down from there. And -- and I held
10 on. And it was -- they say that -- that
11 it's much easier to -- to buy stocks than
12 sell them. And, certainly, that was, I
13 think, the case for most stockowners.

14 Q. Well, your third class period
15 ended, in this case, in -- in March of
16 2008, correct?

17 A. Right, right.

18 Q. And, so, you -- you had
19 substantial losses after that? Is that
20 what your --

21 A. I had --

22 Q. -- testimony is?

23 A. I had losses after that, but most
24 of -- I mean, this is -- this is what I
25 recall.

1 Tauber - Confidential 237

2 Q. Yeah.

3 A. Most of my losses occurred before
4 then, if I'm not mistaken.

5 Q. How much did you -- how much did
6 you end up losing in Sigma after the -- the
7 third class period?

8 A. Third class period ends --

9 Q. It ended in March of 2008.

10 A. Beginning of March? End of
11 March?

12 Q. Yes.

13 MR. BROWER: March 12th.

14 Q. March 12th.

15 A. You know, I just don't know. I
16 think that by that time, I was down to
17 perhaps -- I'm thinking maybe perhaps
18 10,000 shares from 40 or 50, something like
19 that, if that.

20 Q. Do you -- do you contend that
21 your losses after the class periods
22 involved in this case were a result of any
23 illegal activity?

24 A. I'm going to -- to stick with --
25 with the complaint as is, I'm not making

1 Tauber - Confidential 238

2 any allegations beyond that. I think that
3 decisions I made after that were certainly
4 set in place in some ways, or at least were
5 a -- a factor in my retaining Sigma.

6 Q. Now, you experienced losses in
7 your other trading beside Sigma also?

8 A. Relatively minor compared to
9 Sigma.

10 Q. Okay. Well, during this time, I
11 think that you testified you think you had
12 about \$2 million of assets that you were
13 trading?

14 A. I thought it was more than that.
15 I was thinking that I had about two and a
16 half million dollars. But I --

17 Q. Okay.

18 A. In November, probably, at the end
19 of November, it would have been something
20 like that.

21 Q. Okay. And what happened to the
22 two and a half million?

23 A. It -- well, Sigma went away,
24 basically. It returned to the basement.
25 I'm not sure when it did. I think it was

1 Tauber - Confidential 239

2 probably maybe by May. It was back down to

3 about 10 or \$15.

4 Q. What's left of the two and a half

5 million dollars today?

6 A. The answer is nothing.

7 Q. Was it all lost in the market?

8 A. Yeah.

9 Q. All right. Did you trade on

10 margin at all?

11 A. I did.

12 Q. And did you trade on margin

13 during the class periods?

14 A. I would think so, yeah.

15 Q. That's your recollection?

16 A. Yes.

17 Q. Do your trading records identify

18 margin trades, do you know?

19 A. I wouldn't know.

20 Q. I'm looking at Exhibit 9.

21 Can you tell the amount of

22 margin, if any, that was utilized in making

23 these trades from these records?

24 A. Well, I couldn't tell you from

25 the records. I -- I used margin a fair --

1 Tauber - Confidential 240

2 fair amount, but -- and, of course, that
3 had to be -- had to be paid back. I
4 think -- when I said two and a half
5 million, I meant with margin, two and a
6 half million. So it was probably -- it
7 could have very easily been closer to 2
8 million or less in terms of real money as
9 opposed to what's -- what I owed in terms
10 of margin.

11 Q. Do you think you understood the
12 margin rules adequately when you were
13 engaging in this trading --

14 A. Yeah.

15 Q. -- backed in the class periods?

16 A. Yeah, I did.

17 Q. And expect it to be very risky?

18 MR. BROWER: Object to the form.

19 A. You know what? I don't think
20 margin got me in trouble. I didn't -- I
21 didn't sell, and I didn't lose the money
22 because I -- because of the margin -- any
23 margin problems.

24 Q. When did -- when did you first
25 start utilizing margin in trading for your

1 Tauber - Confidential 241

2 own account?

3 A. Probably 2006 sometime,

4 maybe 2000 -- late 2000 -- that's hard for

5 me to say.

6 Q. That's okay.

7 A. I didn't use it a lot, and --

8 and, of course, depending on the stock, how

9 much you could actually trade on margin is

10 -- is -- is substantially different for

11 each company.

12 Q. Right.

13 A. And -- and I don't think Sigma

14 had a particularly high rating for that, so

15 I think -- I think you were -- you were

16 limited to 10 or 20 percent, something like

17 that.

18 Q. What did you do to educate

19 yourself about the risks of trading on

20 margin?

21 A. Well, like I said, I -- I -- I

22 read everything I could, and I -- I would

23 call up Fidelity, and I would talk -- talk

24 to a consultant. Obviously, generally, we

25 -- we wouldn't talk about Sigma, but we --

1 Tauber - Confidential 242

2 we discussed the issues.

3 Q. And when is the first time that

4 you traded in options?

5 A. Probably summer of 2007.

6 Q. 2007?

7 A. I think.

8 Q. Was Sigma the first time you

9 utilized options?

10 A. I think.

11 MR. HYLAND: Let's just take a

12 couple of minutes. I'm just about

13 done.

14 A. Sure.

15 THE VIDEOGRAPHER: Stand by,

16 please.

17 The time is 4:33. This is the

18 end of DVD 4. We are now off the

19 record.

20 (Recess)

21 (Plaintiffs' memorandum to

22 dismiss the second amended class action

23 complaint was marked as Tauber 18 for

24 identification.)

25 THE VIDEOGRAPHER: Stand by,

1 Tauber - Confidential 243

2 please.

3 The time is 4:38 p.m. This is
4 the beginning of DVD No. 5. We are
5 back on the record.

6 EXAMINATION CONTINUED

7 BY MR. HYLAND:

8 Q. Looking at Exhibit 18, have you
9 seen -- which is Plaintiffs' memorandum of
10 law and opposition to Defendants' Sonar
11 Capital Management's, Neil Druker's motion
12 to dismiss the second amended class action
13 complaint -- have you seen this before?

14 A. If I may have a moment.

15 (Pause)

16 A. I believe I have, yes, sir.

17 Q. And did you review it before it
18 was put into final?

19 A. I believe I did, sir.

20 Q. And you see some -- if you go to
21 the back, the last page of the brief is
22 page 26, and then there's an Exhibit A.

23 Do you see that?

24 A. Yeah.

25 Q. Just go to Exhibit A there. And

1 Tauber - Confidential 244

2 this Exhibit A is entitled "Plaintiff

3 Jeffrey Tauber Trades In Sigma Designs,

4 Inc. Stock," right?

5 A. Right.

6 Q. Okay. Again, I touched on this

7 earlier. But if you take a look under the

8 first column, number of shares, it says

9 "9,000," right?

10 A. Right.

11 Q. Purchased.

12 Trade date: 7/16/2007.

13 A. Right.

14 Q. You were generally positive on

15 Sigma at this time?

16 A. On that date specifically?

17 Q. Around this time. I'm talking

18 during -- during the selling period, during

19 the seller class period, the first seller

20 class period.

21 A. Yeah. I -- I had seen it rise

22 from approximately 10 -- \$10 to \$30.

23 Q. And, so, you purchased 9,000

24 shares, and then sell the 9,000 shares

25 shortly thereafter.

REDACTED

245

1 Tauber - Confidential

2 A. Yeah.

3 Q. Correct?

4 A. Right.

5 Q. What -- what made you do that?

6 Do you know?

7 A. I think you've asked me this
8 before. And I don't mind going back to it.
9 I don't really know. I know that I had --
10 I've taken a look at -- at my -- the number
11 of shares I had over the period -- the
12 class period, and they were fairly
13 consistent. They stayed fairly consistent,
14 for the most part, at about 40,000, I
15 believe.

16 As to why I sold it, there were
17 times when I just got cold feet. There
18 were times when I just got really nervous.

19

20

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22

23

24 And I just -- you know, there

25 were times when it was -- it was difficult

1 Tauber - Confidential 246

2 to be completely rational. And I feel like

3 I was rational almost all the time. There

4 were some times when the -- the work I was

5 doing was -- was very challenging.

6 Q. Your drug court work?

7 A. No, I'm talking about -- I'm

8 talking about this.

9 Q. Oh, okay.

10 A. I mean, this is, you know -- it's

11 -- it's dealing with a lot of money. And

12 -- and it can be -- it can be difficult.

13 And, you know, I wish -- I wish I could

14 always be as rational as -- as I am on the

15 bench.

16 Q. Just for example, if you go to a

17 page in your trading records, Exhibit 9,

18 page 612.

19 A. We're still on 14 -- 16?

20 Exhibit 16?

21 Q. No. If you go to Exhibit 9 --

22 A. I'm sorry.

23 Q. -- which is your trading records.

24 MR. BROWER: Your trading

25 records.

1 Tauber - Confidential 247

2 A. Yeah. Right. Go ahead. Oh,

3 there it is. Yeah. Right.

4 MR. BROWER: Mark, I'm sorry,

5 what page again?

6 MR. HYLAND: Oh, if you go to

7 612.

8 A. 612, yes, sir.

9 Q. All right. This is -- this is

10 the trade date July -- trade date

11 July 20th.

12 A. Yeah.

13 Q. Okay?

14 A. Yeah.

15 Q. And also keep Exhibit 18 out,

16 would you?

17 A. 18?

18 Q. Right. You know, the --

19 A. Right. The one you just gave us?

20 Q. Yeah. And I'm going to be -- you

21 may be looking at the chart on the back.

22 A. All right.

23 MR. BROWER: Does this come from

24 a call option?

25 MR. HYLAND: Yeah. I'm looking

1 Tauber - Confidential 248
2 at -- yes, it is a call option. Yes.
3 Yes. And that's my -- that's my
4 question.
5 MR. BROWER: This? It says
6 "stock."
7 MR. HYLAND: Huh?
8 MR. BROWER: It says "stock" on
9 the chart.
10 MR. HYLAND: Yes, it does.
11 MR. BROWER: Oh, okay.
12 MR. HYLAND: I understand. No,
13 But I'm asking here.
14 Q. In -- in this lawsuit, are you
15 purporting to represent people who held
16 options in the stock?
17 A. I don't believe that -- that
18 was -- that it's part of the complaint, as
19 I understand it.
20 Q. Why not?
21 A. From my understanding, that is
22 not part of the class.
23 Q. Why not?
24 A. From my understanding, the law
25 that's not part of the class, and that's

1 Tauber - Confidential 249

2 something that was discussed.

3 Q. Okay. It was discussed and was

4 decided that you weren't making the calls

5 part of the class or any options.

6 MR. BROWER: Were not.

7 MR. HYLAND: Were not. Yeah.

8 MR. BROWER: Okay.

9 Q. All right. But I see here this

10 reflects that on July 20, 2007 --

11 A. Yeah.

12 Q. -- you're selling 59 call

13 options, correct?

14 A. Right.

15 Q. And why would you be selling call

16 options that day but not selling shares?

17 A. I -- there's -- there's -- you

18 know, there's more profit to be made in

19 options than in shares. But there --

20 there's an understanding or there's -- that

21 you reach a certain number by a certain

22 day. I don't know -- I don't know how

23 else -- how else to say it.

24 Q. Okay. But sitting here today,

25 you can't explain why you were selling

1 Tauber - Confidential 250

2 options, selling calls on that day; is that

3 correct?

4 MR. BROWER: I'm going to object,

5 but you can answer.

6 A. I -- I was in the stock market to

7 make money, and I thought that Sigma was --

8 had shown itself to be a very reliable

9 stock, and I believe that it was

10 appropriate and reasonable to do at the

11 time.

12 Q. Well, but what -- what is the --

13 what is the investment bias of selling

14 calls?

15 MR. BROWER: Object to the form.

16 Q. I mean, what are you hoping to

17 accomplish by selling a call?

18 A. I don't know -- I don't know -- I

19 thought I just said it -- I mean, I may

20 be -- that the purpose is to make -- to

21 make money.

22 Q. How would you make money by

23 selling calls?

24 A. As I understand it, if the -- the

25 call was for -- for July 30th, and I was

1 Tauber - Confidential 251

2 attempting to profit by the stocks reaching
3 the required level.

4 Q. How would you profit by selling a
5 call?

6 A. The -- the call was for
7 July 30th, and the trade date was
8 July 20th. If the stock was at the
9 required level, I would -- I would benefit
10 from it.

11 Q. How? Wouldn't you benefit by it
12 if you bought and exercised a call if the
13 stock was at the required level as opposed
14 to selling a call?

15 MR. BROWER: Object.

16 A. Yeah. I -- I simply -- I --
17 I've -- quite frankly, I -- I -- I
18 cannot -- I can answer -- I cannot answer
19 that --

20 Q. Okay.

21 A. -- at this time.

22 Q. Okay. If you go to 618 of
23 Exhibit 9.

24 And this shows a purchase on
25 August 13, 2007, of some 19,345 shares of

1 Tauber - Confidential 252

2 Sigma, correct?

3 A. We're talking about August 13th?

4 Q. Yes.

5 A. All right.

6 Q. Page 618.

7 A. Okay. All right.

8 Q. And you see a lot of purchasing

9 activity on that page, over the next three

10 pages, from 618 to 621 --

11 A. You know, I --

12 Q. -- correct?

13 A. -- I believe, although I can't

14 say it for sure, my -- my guess is that

15 it's the same transactions. Is that

16 incorrect?

17 Q. Oh, I don't know. It could be.

18 But my point is that -- that from records

19 618 to 621, it looks like you've purchased

20 almost 20,000 shares of Sigma for about

21 \$645,000.

22 A. Yeah.

23 Q. Okay?

24 A. Yeah.

25 Q. Now, for you, isn't that a huge

1 Tauber - Confidential 253

2 purchase?

3 A. That -- that is a huge purchase,

4 yeah.

5 Q. Had you ever made one that big up

6 to that point, do you know?

7 A. Doesn't look like I did.

8 Q. Okay. Now, as you're sitting

9 here today, can you identify any reason

10 that caused you to make a purchase of that

11 size?

12 A. Well, you know, there were so

13 many -- so many ways that I received input.

14 And just going back and reviewing the

15 Gilder hotline, the various existing

16 analyses that Fidelity did, and the fact

17 that it appeared to me that it was

18 reasonable to do so. But if you're asking

19 me was there any specific reason, I simply

20 couldn't tell you at this point.

21 Q. Well, you -- okay.

22 On August 13th, you're -- you're

23 -- you're buying 19,345 shares for

24 \$645,000. And then the same day, you sold

25 18,000 shares.

1 Tauber - Confidential 254

2 What happened?

3 A. You know, probably the best --

4 best way to describe -- I mean, just

5 looking at it and knowing myself, I -- I

6 probably got cold feet.

7 Q. Okay. If you go to 626 --

8 A. All right.

9 Q. -- which shows -- if you go to

10 6 -- starting at 626 all the way to 645.

11 A. Okay.

12 Q. I think that shows all of your

13 trading on October 22, 2007.

14 A. Yeah, yeah.

15 Q. Right? That's that it looks

16 like?

17 A. Yeah. That was a single trade.

18 Q. A what?

19 A. It was a single trade that was

20 broken down --

21 Q. Okay.

22 A. -- by Fidelity.

23 Q. So you're selling 17,800 shares

24 for about \$940,000, correct?

25 A. I don't remember the exact

REDACTED

Tauber - Confidential

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numbers, but it was a lot of money.

3

4

Q. Do you know why you sold that much?

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A. Yeah. Holding on is -- is really -- is really hard to do sometimes. Black Monday had just occurred, and -- or at least the celebration or the anniversary. And there were some -- there were just some reasons why I felt that maybe I should get out, which, I suppose that you can call it cold feet.

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Q. Okay. Now, if you go to page 646, and if you go from 646 to 650.

A. Okay.

1 Tauber - Confidential 256

2 Q. This shows transactions on

3 November -- November 8th.

4 A. Yes, sir.

5 Q. And it looks like you purchased

6 19,545 shares on November 8, 2007, for

7 \$1,070,476.

8 Do you see that?

9 A. All right. Starting on page 646

10 through page --

11 Q. Right. 646 to 650, I think it

12 is.

13 A. Okay.

14 Q. Yes.

15 A. Yeah. Okay.

16 Q. And, again, it looks like -- and

17 it looks like, from these records and from

18 your chart on Exhibit 18, that on

19 November 8th, you purchased over a -- more

20 than 19,000 shares, right?

21 A. Yeah.

22 Q. And this is after you had, just

23 two weeks before, sold approximately the

24 same amount, right?

25 A. Okay.

1 Tauber - Confidential 257

2 Q. Now, so you got out of the stock
3 pretty substantially on October 22nd and
4 then got back into it on November 8th.

5 A. Right.

6 Q. And so you purchased there.

7 Any explanation -- do you have
8 any -- any reason why you did that?

9 A. The only thing I could tell you
10 is that I was still -- I still believed
11 that this stock had great promise and
12 decided that I wanted to remain active in
13 it. And as to specifics, I was very
14 diligent in collecting information and
15 doing my best to follow its rise.

16 Q. Because on the next day, you
17 purchased another 24,845 shares. So you
18 purchased about a million 350 in the course
19 of two days, right, on 11/8 and -- well,
20 11/8 and 12, I guess.

21 A. Yes, sir.

22 Q. And then if you look at 654, you
23 sold 5300 shares.

24 A. Right.

25 Q. So after buying a million 350,

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you then quickly sold 5,300 shares.

Do you have any -- any explanation why you would, you know, a couple weeks before, sell about a million dollars' worth, and then two weeks later, buy back a million 350's worth, and then the next day after completing that, sell 5300 shares?

A. I think I've given you the best answer I can, which is that I was trying to optimize my profit, and using the information I had, I was making decisions. What those -- what that information was -- what -- seven years ago or eight years ago -- is -- is so -- so difficult to -- to reconstruct.

Q. I'm just -- I fully understand that.

But what I'm trying to get at is, we see these purchases and sales coming in such a fashion as the way we do.

Does that jog your recollection as to why you were doing it?

A. It -- it -- it jogs my

1 Tauber - Confidential 259

2 recollection as to how much money I've

3 lost, yes, it certainly does that.

4 Q. Because after that sale, on

5 November 12th of 5300, a week later, you

6 purchased on the 19th and the 20th,

7 respectively, 5,000 shares on each day,

8 correct?

9 A. The 15th and the 20th?

10 Q. No, on the -- on the 19th and the

11 20th.

12 A. Okay.

13 Q. And that's on 661 and 662, I

14 think.

15 A. All right. 651 and 652? I'm

16 sorry.

17 Q. Yes. Yes.

18 And if you look at your chart

19 also attached as Exhibit 18, it will also

20 show you the transactions.

21 A. All right.

22 Q. So on the -- on the 11th and

23 12th, you -- on the -- excuse me -- on

24 the -- on the -- on the 11th -- on

25 November 12th, we see a purchase of 5,000,

1 Tauber - Confidential 260

2 and then we also see a sale of 5300.

3 A. On the 11th?

4 Q. No, on -- I'm sorry. We went

5 over the purchases on -- on November 8th.

6 A. Okay.

7 Q. We've gone over those --

8 A. Yeah.

9 Q. -- which was, like, a million 350

10 --

11 A. Okay.

12 Q. -- and approximately 19,000-plus

13 shares.

14 And then we have a sale of 50 --

15 another purchase of 5,000 shares on

16 November 12th, correct?

17 A. 5600 -- excuse me -- 5300, yeah.

18 Q. Yes? On the 12th.

19 A. Right.

20 Q. And then a sale on the 12th of

21 5300.

22 A. Right.

23 Q. So you bought 5300 on the 12th,

24 and then you sold 5300 on the 12th.

25 A. At virtually the same price.

1 Tauber - Confidential 261

2 Q. Yes.

3 MR. BROWER: Are we on 11/12 now?

4 MR. HYLAND: The date 11/12?

5 MR. BROWER: Yeah.

6 MR. HYLAND: Yes.

7 MR. BROWER: Okay. That's not

8 the same price.

9 Q. Again, so you buy and sell 5300

10 on the same day.

11 A. That apparently is what happened.

12 Q. And did -- I mean, do you think

13 you -- you bought and then you sold because

14 you got cold feet?

15 A. I think that's certainly one --

16 one possibility.

17 Q. You don't think there was any

18 news that came down, do you, that would

19 make you do that?

20 A. I have no recollection of that.

21 Q. Okay. And then after that, you

22 purchased, on November 19th and 20th,

23 another 5,000 shares each day for 10,000

24 shares.

25 A. Right.

1 Tauber - Confidential 262

2 Q. If you look at 672, Exhibit 9.

3 A. Okay.

4 Q. Yeah. You see over on the right,

5 it says -- in three spots there, it says,

6 "Not an execution"?

7 A. Mm-hmm.

8 Q. Yes?

9 A. Yeah.

10 Q. What does that mean? Do you know

11 what that refers to? Was that a canceled

12 order?

13 A. I really don't know.

14 Q. Okay. And if you go to --

15 A. It says, "canceled orders," sir,

16 in the last -- the last phrase in each --

17 in each one.

18 Q. Yes, yes. The bold says, "Not an

19 execution." You're correct. "Canceled

20 orders," right.

21 Do you remember why you would

22 have canceled an order?

23 A. No, sir.

24 Q. Because on December 26, 2007, it

25 looks like you purchased 20,000 shares

1 Tauber - Confidential 263

2 exactly, I think.

3 No, maybe it was more than that.

4 Yeah, 20,000 shares exactly for a

5 1,109,000 shares. And --

6 MR. BROWER: Shares?

7 MR. HYLAND: No, dollars, I'm

8 sorry. 20,000 shares for a purchase

9 price of \$1,109,982.

10 Q. All right. So, again, sitting

11 here today, do you have any explanation for

12 your trading decision?

13 A. Well, it looks like they're

14 both -- December 26th -- just one moment.

15 It looks like I bought it and

16 sold it almost -- almost immediately,

17 because there's no change at all.

18 Q. It looks -- it looks like you

19 purchased 20,000 shares on the 26th, and

20 then you sold 20,655 shares on the same

21 day, right?

22 A. I couldn't tell you the number of

23 shares, sir.

24 Q. Okay.

25 A. But approximately.

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Q. That's what -- I mean, approximately. Because you have -- you have extensive -- from your chart, you have extensive -- your chart indicates a purchase of 19,300 shares, then a separate purchase of 400, then a separate purchase of 300 for a total of 20,000 shares on December 26, 2007, and then sales that appear to add up to slightly more than that.

A. At the same price.

Q. About the same price.

A. Right.

Q. Right. So aside from giving Fidelity commission dollars, what -- what were you doing?

A. I think -- I think the best way to describe it is that I was changing my mind. Now, specifically why I did in that particular fashion, I could not tell you today.

Q. And -- and if you just -- rather than go through it all, if you -- if you just take a look, you know, at your

1 Tauber - Confidential 265

2 activities in January, it looks like you

3 finished the month of December with some

4 sales on the 27th, correct?

5 A. I'd have to look at that again.

6 Q. Okay. Yeah. It's Exhibit 18, if

7 you want to look at that chart.

8 A. Yeah. There were some sales on

9 the 27th.

10 Q. And then you had transactions in

11 January, up to the 16th, and then no

12 transactions until March 4th?

13 A. That's -- that's correct.

14 Q. And, so, you have -- you're

15 representing buyers from December 20th

16 to -- into March, correct?

17 A. I thought there was only one

18 buyer; is that correct? And that was

19 December --

20 Q. You're -- you're --

21 MR. BROWER: He meant through

22 March.

23 A. Through March.

24 Q. Through March 4th.

25 A. Right, right, okay.

1 Tauber - Confidential 266

2 Q. But the -- the third class period
3 starts on December 20th, correct?

4 A. Right.

5 Q. And all of your activity during
6 that period on and after December 27th
7 consists of selling activity, correct?

8 A. After the 27th, apparently so,
9 yes, sir.

10 Q. All right. And, so, during the
11 buyer class period, where you were
12 representing buyers, you -- you were --
13 again, you were a net seller, correct?

14 MR. BROWER: Object to the form.

15 A. I couldn't -- once again, I
16 couldn't tell you. I haven't -- I haven't
17 tracked that. Or at least I haven't
18 tracked that recently, so I couldn't tell
19 you, sir.

20 Q. Okay. And do you have in mind,
21 as you sit here today, again -- the
22 same question for the buyer class period --
23 any further enlightenment on your
24 investment thesis during that period other
25 than what you've testified to?

1 Tauber - Confidential 267

2 MR. BROWER: Objection. Go

3 ahead.

4 A. Not really.

5 Q. Okay. I have no further

6 questions.

7 MR. BROWER: I don't have much.

8 EXAMINATION

9 BY MR. BROWER:

10 Q. Could you go to Tauber Exhibit 8.

11 That's the certification.

12 Okay. Look at the chart.

13 Mr. Hyland pointed out that none of your

14 options transactions were listed on this

15 chart.

16 Do you remember that?

17 A. Yeah.

18 Q. Okay. And that was correct;

19 they're not listed?

20 A. That was my understanding.

21 Q. Okay. Could you look at

22 paragraph -- turning over and look at

23 paragraph 4, and read that into the record.

24 A. "Plaintiff's transactions in

25 Sigma Designs, Inc. Common stock during the

1 Tauber - Confidential 268

2 class period are attached hereto."

3 Q. Okay. So notwithstanding the

4 date that we've spent a lot of time on

5 today, that was, in fact, the correct types

6 of transactions listed on the attachments?

7 A. Common stock.

8 Q. All right. Okay.

9 Can you go to Exhibit 9. That's

10 the trading records, these trading records.

11 Okay. Were the documents --

12 let's be clear. Exhibit 9 are confirmation

13 statements or individual confirmation

14 statements?

15 A. Apparently so.

16 Q. Okay. There's a large collection

17 of them it's about.

18 A. Yeah.

19 Q. Were these documents available to

20 you online at the time you contacted

21 counsel and/or prepared the PSLRA

22 certification?

23 A. No. My recollection is that they

24 had to go, what they described, into the

25 back room to get them.

1 Tauber - Confidential 269

2 Q. Okay. And do you recall what --
3 what --

4 A. They were archived, but -- but
5 not -- not online.

6 Q. Okay. And were -- and -- and how
7 long do you recall after you contacted --
8 and you've testified you contacted someone
9 at Fidelity to get these Exhibit 9.

10 How long did it take them to --
11 to get these to you after you contacted
12 them about Exhibit 9? And that is, asked
13 them for confirmation statements or
14 something showing actual trade dates.

15 A. I guess I -- I need to know what
16 date these were received.

17 Q. Well, do you recall generally
18 just how long it took Fidelity to comply
19 with this request? Best estimate based on
20 your recollection. If you have no
21 recollection, you have no recollection.

22 A. I know it took some time, some --
23 some weeks, I believe.

24 Q. Okay. All right.

25 Let's look at that trade -- let's

1 Tauber - Confidential 270

2 look at -- I'm going to use this just for

3 simplicity -- the chart that's attached to

4 Exhibit 18, just for simplicity.

5 Is this the right one? I may

6 have the wrong one. I'm sorry. Where's

7 the one I marked up? This is the one I

8 marked up.

9 Okay. Anyway, all right.

10 First question: At the end -- at

11 -- the class period, as you know, ends

12 around March 12, 2008.

13 A. Okay.

14 Q. We've -- we've covered that

15 today.

16 Did you own any Sigma stock

17 before July of 2007?

18 A. Yes.

19 Q. Do you recall approximately how

20 much -- the documents will speak for

21 themselves.

22 But do you recall approximately

23 how much?

24 A. I would -- I would guess probably

25 20 or 30,000 shares.

1 Tauber - Confidential 271

2 Q. Okay. Did you own any Sigma
3 stock after March 12, 2008?

4 A. Yes.

5 Q. Do you recall about how much?

6 A. You know --

7 Q. Approximately.

8 A. -- I -- I couldn't say.

9 Q. Okay. Do you know or recall
10 whether shares you purchased before -- of
11 Sigma -- that you purchased before July of
12 2007 were at a price more or less than the
13 prices at which you sold those shares
14 during the -- any of the three class
15 periods?

16 A. I think they had all gone up.

17 Q. Okay. So when you sold shares,
18 for instance, in December of 2007, do you
19 know whether those were shares you
20 purchased before the class period at prices
21 below the prices you received on those
22 sales, or were those shares you actually
23 purchased during a class period?

24 A. I mean, that's just -- that's
25 very difficult to say. I -- I did a lot of

1 Tauber - Confidential 272

2 trading, and I know I started out in July
3 with, as I said, probably 20 to 30,000
4 shares. Over the next several months, I --
5 I think I may have added 10,000 shares
6 through December.

7 Q. Okay. My question -- my -- I
8 guess my question --

9 A. I'm not sure if I'm answering
10 your question.

11 Q. Okay. My question is, is it
12 possible that you were selling pre-class
13 period shares that had a lower basis during
14 the class period rather than selling shares
15 you bought perhaps a week or two before you
16 sold those same shares?

17 A. I see what you're saying.

18 Yeah, certainly. I mean, I
19 was -- I was aware of -- of -- I had some
20 awareness of when I bought what packages of
21 stock. That was -- that was something that
22 I think Fidelity had on its -- on its
23 online service.

24 Q. Okay. So when Mr. Hyland would
25 ask you why did you buy shares on 12/21 and

1 Tauber - Confidential 273

2 then sell those same shares on 12/26, and

3 questions of that type --

4 A. Yeah.

5 Q. -- are you sure you were actually

6 selling the shares you bought on 12/21, or

7 were you buying shares that you had paid

8 much less money for before the class period

9 on 12/26?

10 A. The answer to that is I'm not

11 sure. I don't know.

12 Q. Okay. Fair enough.

13 Could you look at that chart

14 that's attached to Exhibit 18. This is

15 just the transaction --

16 You're on the wrong document.

17 MR. BROWER: Thank you.

18 Q. The 11/12 transaction, the wash

19 transaction --

20 A. Yeah.

21 Q. -- do you know whether that

22 represented the exercise of an option and

23 sale of the shares pursuant to the option

24 or options?

25 A. 11/12?

1 Tauber - Confidential 274

2 Q. Yeah.

3 A. What about it, sir?

4 Q. Do you know whether the purchase

5 and sale on that day, which you'll see is

6 identical, at identical prices --

7 A. Yeah.

8 Q. -- which is hard to do, was the

9 exercise and sale of an option

10 simultaneously?

11 A. I couldn't say.

12 Q. Okay. Would that be what would

13 occur in terms of price if you, in fact,

14 sold options on 5,300 shares of the

15 stock -- I'm sorry -- if you exercised call

16 options of 5,300 shares and ordered them to

17 be immediately sold simultaneously?

18 A. I -- I assume that that's --

19 that's one possibility, yeah.

20 Q. Okay. By the way, what

21 happens -- you noted before, I believe --

22 I'm not going to go back to the page number

23 -- the option that Mr. Hyland pointed had

24 an expiration date of July 20th.

25 A. July 30th, I think it was.

1 Tauber - Confidential 275

2 Q. It was July 30th. Thank you.

3 You're correct.

4 And it was sold on July 2nd --

5 20.

6 A. 20th.

7 Q. Right.

8 What happens if you don't either

9 sell the option at a profit or exercise the

10 option before the expiration date? And

11 that's a call option.

12 A. On the expiration date, you

13 can -- you can purchase it at the level

14 that you've -- you've -- you bought it for.

15 So if it's a \$20 option, you can buy that

16 option on that date for \$20.

17 Q. You can buy the stock.

18 A. You can buy the stock for \$20.

19 Q. Okay.

20 A. That's -- that's what I meant to

21 say.

22 Q. I know. What if the stock was

23 trading at \$18 on that day?

24 A. You can just leave it alone.

25 Q. And what happens to the option?

1 Tauber - Confidential 276

2 A. Then you lost -- you lost the

3 option.

4 Q. Okay. That option goes away.

5 A. The cost, what you paid for the

6 option.

7 Q. Right, is lost.

8 A. Yeah.

9 Q. Okay. Could you take a look at

10 Exhibit 7. That was the redacted retainer

11 agreement. Excuse me.

12 A. Yes, sir.

13 Q. Okay. Could you read the last

14 paragraph on the first page.

15 A. You want me to read it out loud?

16 Q. Yeah.

17 A. "We agree to represent" --

18 Q. Better you than me. Trust me.

19 A. All right. "We agree to

20 represent you and other class members in

21 this litigation on a fully contingent

22 basis. This means that if, and only if,

23 the lawsuit generates a fund and/or benefit

24 for the class, will we seek payment of our

25 fees. The payment of our fees and the

Tauber - Confidential

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reimbursement of our expenses in this case are subject to Court approval. Absent an order from the Court to the contrary, fees will be calculated as a percentage of the gross amount of the fund and/or benefit. If there is no reason" -- rather -- "if there is no recovery for the class, this firm will ordinarily recover no fees. You will not have to pay any fees or advanced expenses yourself."

Q. Is that your understanding of your agreement with your counsel representing you in the case on behalf of the class?

A. It is.

Q. Okay. Could you take a look at the next paragraph on the next page.

A. The very next paragraph?

Q. Yeah.

A. Okay. Do you want me to read it again, or just read it --

Q. No, read the first paragraph on top of page 2 to yourself. You don't have to read it into the record.

1 Tauber - Confidential 278

2 A. All right.

3 Q. Just tell me when you're done.

4 (Pause)

5 A. Okay.

6 Q. Okay. Is that your understanding

7 of your arrangement with your counsel

8 representing you in the class in this

9 action with respect to out-of-pocket

10 expenses?

11 A. Yes.

12 Q. Okay. And you agreed to that at

13 the time you became involved in this

14 litigation?

15 A. Yes, sir.

16 Q. Okay. When was the last time you

17 sat as a superior court judge?

18 A. On November -- last day of

19 November, which, I think it was the 28th,

20 if I'm not mistaken. I'm not sure.

21 Q. Okay. And that would be

22 November 2014.

23 A. Yeah.

24 Q. And are you still, so to speak,

25 on call?

1 Tauber - Confidential 279

2 A. Well, I've been -- I've been in
3 the Caribbean for the last six weeks. So I
4 took my vacation and came back --
5 basically, I came back early to -- to be
6 here in this proceeding. When I get back
7 to California, I imagine I will be asked to
8 accept another assignment.

9 Q. Okay. And by "asked to accept
10 another assignment," what -- what does that
11 mean?

12 A. I'll call -- when I'm ready, I'll
13 call the Administrative Office of the
14 Courts, I'll tell them that I'm interested
15 in an assignment, and they typically will
16 let me know what's available and ask me if
17 I'm interested in working in specific
18 courts.

19 The other possibility is that
20 there are courts that I've worked for on
21 behalf previously, for example, Marin
22 County. I just spent a year -- almost a
23 year and a half working there. If I
24 contact them, I might just go back to work
25 for them. The downside for that is that

REDACTED

1 Tauber - Confidential 280

2 they would probably want me full time, and
3 I'm reluctant to do that.4 Q. Okay. And that would be sitting
5 full time as a superior court judge in
6 Marin County, California.

7 A. Yeah.

8 Q. Without disclosing what the terms
9 of the agreement was, the settlement that
10 was reached with PG&E, were -- were you
11 happy with the settlement?

12 A. Oh, yes.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED]

18 Q. And with respect to the action
19 regarding payment of fees to you by the
20 California Bar Association for services
21 provided, were you happy with the result
22 or -- and/or settlement that occurred
23 there?

24 A. It was satisfactory.

25 Q. Okay. Is there any reason you

1 Tauber - Confidential 281

2 could not perform the duties of a class

3 representative in this action that you know

4 of?

5 A. I don't believe so.

6 Q. I have no further questions. I'm

7 done.

8 MR. HYLAND: One question.

9 RE-EXAMINATION

10 BY MR. HYLAND:

11 Q. Other than the litigations

12 that -- or the -- or the disputes that we

13 identified, which included against the

14 State Bar of California, the IRS, and the

15 separate action, were there any others?

16 A. No.

17 MR. BROWER: Within the time

18 period.

19 Q. Within -- within the time period.

20 A. The ten years.

21 Q. Ten years from the time the

22 interrogatory was propounded.

23 A. No, no.

24 Q. Thank you.

25 A. Thank you, sir.

1 Tauber - Confidential 282

2 THE VIDEOGRAPHER: Stand by,
3 please.

4 The time is 5:34 p.m. This is
5 the end of DVD 5 and today's deposition
6 of Jeffrey Tauber. We are off the
7 record.

8 MR. BROWER: The witness will
9 read and sign.

10 (Time noted: 5:35 p.m.)

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JEFFREY TAUBER

Subscribed and sworn to
before me this day
of 2015

CERTIFICATE

STATE OF NEW YORK)

) ss.

COUNTY OF NASSAU)

I, Sharon Lengel, a Registered
Professional Reporter and Notary Public
within and for the State of New York, do
hereby certify:

That JEFFREY TAUBER, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is
a true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

SHARON LENGEL, RPR

January 22, 2015

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